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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

12 QUYEN KIM DANG, INDIVIDUALLY AND  
13 AS A GUARDIAN AD LITEM FOR KENNY  
14 MINH CAO TRAN, A MINOR, AND  
15 PERSONAL REPRESENTATIVE OF ANDY  
16 TRAN, DECEASED; KENNY MINH CAO  
17 TRAN, A MINOR BY AND THROUGH HIS  
18 GUARDIAN AD LITEM, QUYEN KIM  
19 DANG; NAM VAN TRAN, BIOLOGICAL  
20 FATHER OF ANDY TRAN, DECEASED;  
21 BUA THI PHAN, BIOLOGICAL MOTHER  
22 OF ANDY TRAN, DECEASED,

23 Plaintiffs,

24 v.

25 CITY OF GARDEN GROVE; GARDEN  
26 GROVE CHIEF OF POLICE JOSEPH M.  
27 POLISAR; GARDEN GROVE POLICE  
28 OFFICER GENDREAU; GARDEN GROVE  
POLICE OFFICER KARSCHAMROON;  
TASER INTERNATIONAL, INC., AND  
DOES 1 TO 10, INDIVIDUALS; AND ROES  
1 TO 10, ENTITIES, INCLUSIVE,

Defendants.

*Case No. SACV10-00338 DOC  
(MLGx)*

**PLAINTIFFS' DECLARATIONS  
AND EXHIBITS IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT AND/OR  
ALTERNATIVELY, SUMMARY  
ADJUDICATION OF ISSUES**

**DATE: July 25, 2011**

**TIME: 8:30 a.m.**

**CTRM: 9-D**

*[Filed concurrently with Plaintiffs'  
Opposition to Defendants' Motion for  
Summary Judgment and Plaintiffs'  
Statement of Genuine Disputes and  
Plaintiffs' Separate Statement of  
Undisputed Facts and Conclusions]*

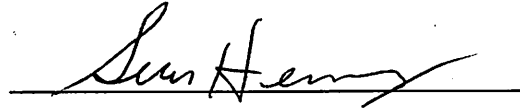
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Exhibit A	Deposition of Mark Zimmerman
Exhibit B	Deposition of Daniel Karschamroon
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Exhibit G	Deposition of Ted Peaslee
Exhibit H	Garden Grove Police Department ("GGPD") General Orders: 2.6, 2.24, 5.9, 5.31
Exhibit I	Gendreau GGPD Internal Affairs Interview
Exhibit J	Karschamroon GGPD Internal Affairs Interview
Exhibit K	Sergeant Wagner's police report
Exhibit L	Karschamroon Response to Request for Admissions (Set One), number 39

///

Date: July 05 , 2011

LAW OFFICE OF SEAN HENNESSEY

A handwritten signature in cursive script, appearing to read "Sean Hennessey", is written over a horizontal line.

SEAN HENNESSEY

ATTORNEY FOR PLAINTIFFS

1 **I. INTRODUCTION**

2 Plaintiffs' Complaint for Damages, which was filed on December 3, 2009,  
3 alleges ten (10) causes of action. (Exb. 1, Complaint for Damages). Two causes of  
4 action were directed only at Taser International for products liability and  
5 negligence, although those claims have since been dismissed.

6 This motion addresses only the eight (8) causes of action directed at the City  
7 of Garden Grove, the Garden Grove Police Department, Police Chief Joseph  
8 Polisar, and Police Officers Richard Gendreau and Daniel Karschamroon. Those  
9 causes of action are: (1) Wrongful Death – 42 U.S.C. § 1983; (2) Survival Action –  
10 42 U.S.C. § 1983; (3) Deprivation of Familial Relationships – 42 U.S.C. § 1983;  
11 (4) Violation of Civil Rights – Cal.Civ. Code 52.1(b); (5) Assault and Battery; (6)  
12 Negligence; (7) Negligent Infliction of Emotional Distress; and (8) Intentional  
13 Infliction of Emotional Distress.

14 In the more 1 1/2 years which have passed since this lawsuit was filed, a  
15 substantial amount of written discovery has been exchanged and the depositions of  
16 all percipient witnesses have now been completed. As such, the "facts" of this case  
17 have now been established and, while the parties might differ on the interpretation  
18 of those facts and the legal theories applicable to them, this case has ripened to the  
19 point where summary judgment is appropriate, especially on the threshold issue of  
20 qualified immunity.

21 Although the outcome of this case was the unfortunate death of Andy Tran,  
22 the undisputed facts of this case will demonstrate that the minimal use of force  
23 applied by the involved officers (i.e. a single application of the Taser), as dictated  
24 by the totality of the circumstances, was objectively reasonable and that there is no  
25 need for this case to be presented to a jury in order to reach the same conclusion.

26 **II. STATEMENT OF FACTS**

27 On September 3, 2008, at approximately 11:29 a.m., Garden Grove police  
28 officers Richard Gendreau and Daniel Karschamroon were dispatched, separately,

1 to 13252 Barnett Way, in the City of Garden Grove. The officers responded to a  
2 report of a "violent, mentally ill male" that was trying to break into the residence,  
3 that someone had been assaulted, and that there was a "weapon" involved. Prior to  
4 arriving on scene, Officer Karschamroon tried to clarify with Dispatch if there was  
5 any further description of the weapon(s), and was informed that it was unknown as  
6 to what type of weapon was involved. (Karschamroon Decl., ¶¶ 1-5; Gendreau  
7 Decl., ¶¶ 1-5; Exb. 2 Transcript/Audio 911 recording; Exb. 3, Dispatch CAD.

8 Police Dispatch as well as the CAD printout noted the male's (decedent Andy  
9 Tran) description as "mental case." The "event" remarks on the printout noted that  
10 the calling party (Plaintiff Nam Van Tran, Andy's father) indicated his son was  
11 crazy. When asked if his son had weapons, Plaintiff Tran affirmed. Dispatch could  
12 hear a child crying in the background. Plaintiff Tran also indicated to Dispatch he  
13 was dizzy and he kept repeating to "send someone right now, send someone right  
14 now. Take to hospital." Dispatch indicated that Plaintiff Tran was out of breath and  
15 would not answer any questions as to the whereabouts of his son, Andy Tran, at the  
16 moment. (Karschamroon Decl., ¶ 6 Gendreau Decl., ¶ 6; Exb. 2, Transcript/Audio  
17 911 recording; Exb. 3, Dispatch CAD.).

18 Both Officer Karschamroon and Officer Gendreau arrived at approximately  
19 11:36 a.m. However, Officer Karschamroon was the first to arrive at the residence.  
20 As described by Dispatch, there was a male individual who appeared to be trying to  
21 break into or enter the residence through a window. There was a broken screen  
22 window next to him and as Officer Karschamroon approached him, his body  
23 halfway into the window. It appeared he was trying to grab something from inside  
24 the window. (Karschamroon Decl., ¶ 7; Exb.3, Dispatch CAD).

25 Officer Karschamroon, who had been advised by Dispatch that the subject's  
26 name was Andy Tran, called out "Andy" three to four times to get his attention. At  
27 that time, Andy Tran stopped what he was doing at the window, slowly turned  
28 around, and faced Officer Karschamroon. Andy was instructed to come down from

**DECLARATION OF SEAN HENNESSEY**

I, SEAN HENNESSEY, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and the Central District of California. I am the attorney of record for the Plaintiffs Quyen Kim Dang, Kenny Minh Cao Tran, Nam Van Tran, and Bua Thi Phan. I have personal knowledge of all the facts asserted in this declaration and if called upon to testify, I could and would competently testify thereto. I make this declaration in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment.

2. Attached hereto as **Exhibit "A"** to Evidentiary Appendix and incorporated herein by reference are true and correct copies of portions of the Deposition of Mark Zimmerman.

3. Attached hereto as **Exhibit "B"** to Evidentiary Appendix and incorporated herein by reference are true and correct copies of portions of the Deposition of Daniel Karschamroon.

4. Attached hereto as **Exhibit "C"** to Evidentiary Appendix and incorporated herein by reference are true and correct copies of portions of the Deposition of Richard Gendreau.

5. Attached hereto as **Exhibit "D"** to Evidentiary Appendix and incorporated herein by reference are true and correct copies of portions of the Deposition of Richard Fukumoto, M.D.

1           6. Attached hereto as **Exhibit "E"** to Evidentiary Appendix and  
2 incorporated herein by reference are true and correct copies of portions of the  
3 Deposition of Bua Thi Phan.

4  
5           7. Attached hereto as **Exhibit "F"** to Evidentiary Appendix and  
6 incorporated herein by reference are true and correct copies of portions of the  
7 Deposition of Benedict Lux.

8  
9           8. Attached hereto as **Exhibit "G"** to Evidentiary Appendix and  
10 incorporated herein by reference are true and correct copies of portions of the  
11 Deposition of Ted Peaslee.

12  
13           9. Attached hereto as **Exhibit "H"** to Evidentiary Appendix and  
14 incorporated herein by reference are true and correct copies of the relevant segments  
15 of the Garden Grove Police Department ("GGPD") General Orders, available to the  
16 general public at the following web address: [http://www.ci.garden-](http://www.ci.garden-grove.ca.us/internet/pdf/pd/gen_orders.pdf)  
17 [grove.ca.us/internet/pdf/pd/gen\\_orders.pdf](http://www.ci.garden-grove.ca.us/internet/pdf/pd/gen_orders.pdf). Specifically GGPD General Order 2.4,  
18 2.24, 5.9 and 5.31.

19  
20           10. Attached hereto as **Exhibit "I"** to Evidentiary Appendix and  
21 incorporated herein by reference is a true and correct copy of Gendreau's GGPD  
22 Internal Affairs Interview, which Defendants provided pursuant to Plaintiffs'  
23 discovery request.

24  
25           11. Attached hereto as **Exhibit "J"** to Evidentiary Appendix and  
26 incorporated herein by reference is a true and correct copy of Karschamroon's  
27 GGPD Internal Affairs Interview, which Defendants provided pursuant to Plaintiffs'  
28 discovery request.

12 Attached hereto as **Exhibit "K"** to Evidentiary Appendix and  
incorporated herein by reference is a true and correct copy of Sergeant Wagner's  
police report.

13. Attached hereto as **Exhibit "L"** to Evidentiary Appendix and incorporated herein by reference is a true and correct copy of Karschamroon Response to Request for Admissions (Set One), number 39.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of July 2011, at Westminster, California.

Date: July 05 , 2011

LAW OFFICE OF SEAN HENNESSEY

SEAN HENNESSEY

ATTORNEY FOR PLAINTIFFS

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

QUYEN KIM DANG, et al.,	)	CASE NO.
SACV10-03388DOC	)	
	)	(MLGx)
Plaintiffs,	)	
	)	
vs.	)	
	)	
CITY OF GARDEN GROVE, et	)	
al.,	)	
	)	
Defendants.	)	
_____	)	

VIDEOTAPED DEPOSITION OF  
MARK ZIMMERMAN

Westminster, California

Tuesday, June 7, 2011

REPORTED BY: Jennifer K. Abe, CSR No. 10753  
Registered Professional Reporter

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

QUYEN KIM DANG, et al.,	)	CASE NO. SACV10-03388DOC
	)	(MLGx)
Plaintiffs,	)	
	)	
vs.	)	
	)	
CITY OF GARDEN GROVE, et	)	
al.,	)	
	)	
Defendants.	)	
_____	)	

Videotaped Deposition of MARK ZIMMERMAN, taken  
before Jennifer K. Abe, a Certified Shorthand Reporter  
for the State of California, beginning at 10:20 a.m. and  
ending at 4:25 p.m., on Tuesday, June 7, 2011, in the  
Law Offices of Sean Hennessey, 8231 Westminster  
Boulevard, Westminster, California.

1 APPEARANCES OF COUNSEL:

2 FOR PLAINTIFF:

3 LAW OFFICES OF SEAN HENNESSEY  
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6 - and -

7 LAW OFFICES OF LIEM H. DO & ASSOCIATES  
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CAROLYN HOANG, LAW CLERK  
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11 FOR DEFENDANT CITY OF GARDEN GROVE, ET AL.:

12 LAW OFFICES OF FERGUSON, PRAET & SHERMAN  
13 BY: STEVEN SHERMAN, ESQ.  
1631 East 18th Street  
Santa Ana, California 92705  
14 TEL: (714) 953-5300

15 ALSO PRESENT:

16 CHUCK GOSWITZ, LEGAL VIDEOGRAPHER  
17 OFFICER GENDREAU  
18 OFFICER KARSCHAMROON

1 break, any break, just say it and it will be granted.  
2 I guaranty you. It's same the favor that's been  
3 given to every single person that's been questioned  
4 in this case; okay?

10:31:33 5 MR. SHERMAN: Don't be bashful. Don't be  
6 shy.

7 THE WITNESS: All right.

8 BY MR. HENNESSEY:

9 Q All right. Now, we were discussing a little  
10:31:37 10 about your relationship, if any, with the neighbors  
11 across the street prior to September 3rd, 2008.

12 And how would you describe, just in general,  
13 what, if any, relationship you had with the people  
14 that lived at 1325- -- when I say "13252 Barnett  
10:31:54 15 Way," do you know what house I'm talking about?

16 A Yeah. The house directly across the street  
17 from my house.

18 Q Okay. On September 3rd, 2008, what was your  
19 address?

10:32:03 20 A 13251 Barnett Way.

21 Q All right. And was that at like a corner of  
22 any streets?

23 A His house is on a corner. My house is on a  
24 corner directly across the street.

10:32:16 25 Q What is the corner of the streets that the

1 houses are on?

2 A Barnett Way and Paloma.

3 Q Okay. So if you were standing on your porch  
4 of your house, what would you see of the Tran  
10:32:29 5 residence?

6 A I would be looking directly at the front of  
7 his house, his porch, his front door, his front  
8 windows, his front yard.

9 Q Okay. And let's say from your front porch,  
10:32:42 10 how far would you say -- how far would you estimate  
11 the distance is from your front porch to, say, the  
12 front sidewalk?

13 I'm sorry. How far would you say the  
14 distance from -- do you have a sidewalk in front of  
10:32:52 15 your house?

16 A Um, not really. It kind of comes around and  
17 stops right where my entrance --

18 Q How about --

19 A -- my walkway is.

10:32:58 20 Q I'm sorry. Do you have a curb?

21 A Yeah. There is a curb.

22 Q From the curb in front of your house to the  
23 front lawn of about midway down the front lawn of  
24 Andy's house, how far would you estimate in feet that  
10:33:13 25 is?

1 do now, what, if anything, changed as to how you  
2 became aware of who lived there?

3 A Well, through all this, you know, and  
4 meeting the family, you know, I found out that the  
10:36:14 5 mom and the -- her husband and the little boy and  
6 then their parents.

7 And before that, I really didn't -- you  
8 know, I had an idea who I saw; but I really didn't  
9 know who the relation of each person was or anything  
10:36:30 10 like that.

11 I don't really -- you know, as far as  
12 neighbors go, I try not to, you know, pay too much  
13 attention. I mean, you know what I mean? I'm not  
14 real neighborly.

10:36:41 15 Q I know exactly what you mean.

16 A My wife is probably more neighborly than I  
17 am, but I'm not really too forward when it comes to  
18 meeting people in the street.

19 Q It sounds like we're cut from the same  
10:36:49 20 cloth. That's fine.

21 MR. SHERMAN: You keep to yourself?

22 THE WITNESS: Pretty much.

23 BY MR. HENNESSEY:

24 Q And how did -- the Tran Family, did they  
10:36:57 25 seem the same way? Did they kind of keep to

1 themselves?

2 A Oh, yeah, a very close-knit family.

3 Q Okay. Did you see them out together  
4 socializing at times?

10:37:07 5 A Just coming and going.

6 MR. SHERMAN: Objection; vague.

7 BY MR. HENNESSEY:

8 Q How about like did you ever see the father  
9 out with the son?

10:37:12 10 A Yeah. The yard, sometimes the little boy  
11 would be out playing. Actually, I think probably I  
12 had more communication with the little kid than  
13 anyone else. You know, we'd say "hi" to him or talk  
14 to the little boy, and their dad would be out. Maybe  
10:37:25 15 he'd be out playing gardener, washing his car or  
16 whatever; and it would be the mom coming home with  
17 the groceries maybe, waving, that kind of thing.

18 Q Okay. And back on September 3rd, 2004,  
19 (sic) do you have -- when you say "the little boy,"  
10:37:38 20 do you have any idea how old the little boy would  
21 have been approximately around that time?

22 A I think he was three or four.

23 Q Okay. All right. And you have children  
24 yourself?

10:37:47 25 A Yes.

1 that you personally observed between members of the  
2 Garden Grove Police Department and Andy Tran?

3 A Yes.

4 Q Okay. I want to talk about that; all right?

10:40:18 5 Now, did you see Mr. Andy Tran before any  
6 police officers arrived on September 3rd, 2008?

7 A Yes.

8 Q Okay. And what did you observe?

9 A Um --

10:40:38 10 Q Go ahead. Sorry.

11 A Well, my first observation was, as I  
12 approached my own house, I saw Mr. Tran sitting on  
13 the side of the street, on the corner on the curb in  
14 a sitting position.

10:40:51 15 Q And when you say that you were approaching  
16 your house, when you say you were approaching your  
17 house -- were you approaching your house on foot? In  
18 a vehicle?

19 A In a vehicle.

10:40:59 20 Q And what type of vehicle?

21 A A work vehicle, a utility-type truck.

22 Q Okay. And -- excuse me. I'm sorry.

23 MR. SHERMAN: He's been sick. So if you  
24 shook his hand, go scrub it now.

10:41:14 25 THE WITNESS: Don't do that to me.

1 MR. HENNESSEY: You have kids, too, so you  
2 know. I'm sorry.

3 BY MR. HENNESSEY:

4 Q So you -- how would you describe your work  
10:41:23 5 vehicle on September 3rd, 2008, the appearance of it?

6 A You know, it was an old Water & Light truck  
7 from the L.A. vehicle pool. It's pretty noticeable.  
8 It's kind of a yellowish-orange. It's got a utility  
9 box in the back, a lot of equipment in the back.  
10:41:43 10 I've got a welder on it and a few other things, but  
11 it's that orange-type truck. It looks like a city  
12 truck or something, a DWP truck, I guess it was.

13 Q Okay. And that's what you used as your --  
14 in your trucking business?

10:41:54 15 A Yes.

16 Q Okay. And you said that you made -- you saw  
17 Andy sitting on the curb.

18 Where were you coming from when you saw him?

19 A I was coming -- I think it's north towards  
10:42:05 20 Euclid from Newhope on Paloma.

21 Q Okay.

22 A And --

23 Q I'm sorry.

24 A And as I come up Paloma Street, I pass right  
10:42:15 25 next to his house before I take the left onto Barnett

1 Way, which I end up parking right in front of my  
2 house, and which is inadvertently in front of his  
3 house, also.

4 Q Okay. So you're coming up Barnett Way?

10:42:26 5 A No. I'm coming up Paloma.

6 Q Sorry. You're coming up Paloma, and then  
7 you take a left onto Barnett Way, which would have  
8 gone directly in front of Mr. Tran's house at 13252.

9 And where did you ultimately park your  
10:42:39 10 truck?

11 A In front of my house, which is, as I said,  
12 in front of his house, also, but across the street.

13 Q Like directly across the street?

14 A Yes.

10:42:49 15 Q Like you're both -- would it be fair to say  
16 that you both have corner-lot houses on the  
17 intersection of Barnett Way and Paloma?

18 A Yes.

19 MR. SHERMAN: Objection; vague.

10:42:59 20 BY MR. HENNESSEY:

21 Q Okay. Would that be fair?

22 You saw Mr. Tran sitting on the curb. And  
23 then what, if anything else, did you see next?

24 A I parked my vehicle. And when I did, I got  
10:43:11 25 out; and I noticed that Mr. Tran had gotten up from

1 the curb and walked into his front yard. In other  
2 words, he walked from the street curb in front of his  
3 house, past his walkway, into the grassy area, which  
4 was his front yard.

10:43:26 5 Q And what, if anything -- well, do you have  
6 any idea, one way or the other, whether Mr. Tran  
7 acknowledged you at all?

8 MR. SHERMAN: Speculation; vague.

9 BY MR. HENNESSEY:

10:43:36 10 Q I mean, for instance, did he wave to you?  
11 Did he gesture his head? You know, did he do  
12 anything that to you suggested some type of, you  
13 know, recognition that he was seeing you? You know,  
14 a wave or a nod of the head or anything?

10:43:50 15 MR. SHERMAN: Same objections.

16 MR. HENNESSEY: If you remember.

17 THE WITNESS: I would say -- I would say  
18 physically, no.

19 MR. HENNESSEY: Okay.

10:43:57 20 THE WITNESS: But I think that -- if I can  
21 speculate, is that possible? No?

22 MR. SHERMAN: We really don't want you to  
23 speculate or guess.

24 THE WITNESS: All right.

10:44:05 25 BY MR. HENNESSEY:

1 Q Do you have any reason to believe that -- do  
2 you have any reason to believe that Mr. Tran, you  
3 know, recognized that you were there?

4 A I think he knew I was there.

10:44:12 5 Q And what makes you believe that?

6 A Well, he was kind of carrying on a little  
7 bit, and I think that a little bit of it was for my  
8 benefit, possibly.

9 Q When you say "he was carrying on a little  
10:44:26 10 bit," can you describe what you mean by that?

11 A Yeah. He seemed a little bit distraught. I  
12 heard him -- actually, I don't know if it was a  
13 little bit like crying or moaning, some type of  
14 whining-type noise.

10:44:41 15 Q Did you hear any words coming out of his  
16 mouth?

17 A No words.

18 Q Now, prior to September 3rd, 2008, had you  
19 ever felt for any reason that Mr. Tran had any type  
10:44:57 20 of problems of any type?

21 A Yes.

22 MR. SHERMAN: Objection; speculation; vague  
23 and ambiguous; foundation; assumes facts not in  
24 evidence; lacks foundation.

10:45:04 25 BY MR. HENNESSEY:

1 Q Prior to September 3rd, 2008, what, if  
2 anything, did you think Mr. Tran's problems may be?

3 A Well, he was a little bit -- he was mentally  
4 unstable.

10:45:14 5 Q When you say "he was mentally unstable,"  
6 what are you basing that opinion on?

7 A Well, based upon some stuff that I had heard  
8 previously that, you know, they had a problem with  
9 his prior -- you know, had to call an ambulance and,  
10:45:33 10 you know, and this kind of thing.

11 He -- he just looked a little bit -- you  
12 know, when I say "normal," I mean, he didn't look  
13 normal at times mentally, a little bit unstable, I  
14 mean. You know, that's just my opinion, I guess.

10:45:51 15 Q Did he sometimes look normal and sometimes  
16 look a little mentally abnormal?

17 MR. SHERMAN: Vague; speculation;  
18 foundation.

19 THE WITNESS: If you -- if you were to see  
10:46:01 20 him occasionally, you'd think nothing of it; but then  
21 other times, I mean living across the street, I would  
22 see some things that seemed a little bit out of the  
23 ordinary that, you know, right now, I probably  
24 wouldn't be able to put my finger on it; but, you  
10:46:15 25 know, when you're parents and, you know, you know

1       that -- you know, watch out. Just keep an eye on  
2       this guy. He's not all there, and I think that the  
3       wife had actually possibly talked to my mom and, you  
4       know, maybe told her some things about Andy and this  
10:46:32 5       kind of thing.

6               I personally didn't hear it from anybody;  
7       but, you know, my mom talked to the family once in a  
8       while.

9       BY MR. HENNESSEY:

10:46:39 10       Q       Okay. So you would hear conversations that  
11       your mom would have with the family? And through  
12       those communications, you learned --

13       A       Probably some hearsay-type situations, yeah.

14       Q       Okay. All right. All right. So you heard  
10:46:50 15       some things from other people, and then you made some  
16       personal observations yourself that led you to  
17       believe that there was something mentally off about  
18       Mr. Tran; is that fair?

19       A       Yeah.

10:47:00 20       Q       Okay. And you indicated you had heard some  
21       information about previous calls for ambulances and  
22       things like that.

23               Did you ever personally observe any  
24       ambulances arrive at the house yourself and --

10:47:15 25       A       I think there was, and it's very vague

1 Now, when you got out of your truck, did you  
2 go inside your house and come back out? Did you stay  
3 outside? I mean, how would you --

4 A Stayed outside.

10:48:25 5 Q Was there any particular reason that you  
6 stayed outside as opposed to going into your house?

7 A Yeah. I detected a little bit of a -- I  
8 detected some -- a little bit of drama that I hadn't  
9 seen before.

10:48:40 10 Q So what you were seeing from Mr. Tran on  
11 September 3rd, 2008, you hadn't seen that type of  
12 behavior from him before?

13 A No.

14 Q Okay. What about the behavior that you saw  
10:48:52 15 caused you to stay outside?

16 A Well, he -- he was on the ground and, like I  
17 said, he was upset. And so I thought it would be a  
18 good idea just to kind of stay there and, you know,  
19 just to stay and see if anything, you know, just to  
10:49:12 20 kind of -- you know, I live there. So I just wanted  
21 to make sure everything was going to be okay.

22 Q Okay. Did you ever feel personally  
23 threatened by Mr. Tran yourself?

24 MR. SHERMAN: Objection; vague.

10:49:22 25 THE WITNESS: No.

1 the ground; and he walked over to the front porch  
2 area.

3 Q Okay. And what, if anything, did you see  
4 him do at the front porch area?

10:50:50 5 A Well, at this time, he was a little more  
6 agitated; and he took the screen and pulled it off of  
7 the front window.

8 Q Okay. Now, when you say "he was a little  
9 more agitated," can you describe what you mean by  
10:51:03 10 that statement?

11 A Well, he pulled the screen off and, you  
12 know, that's probably a little more agitated than  
13 just being on his hands and knees, so --

14 Q And what, if anything, did you do when you  
10:51:15 15 saw him -- when you say he pulled the screen off the  
16 window, which window are you talking about that --

17 A There is a window on the front porch next to  
18 the front door. Actually, it's a double window.

19 Q Okay.

10:51:28 20 A And I believe it had two screens on it, and  
21 he pulled the screen off of the one window that was  
22 closest to the door; and I think the window goes up  
23 and down, slides up and down. So I think he wanted  
24 to get back into the house.

10:51:41 25 I'm going to assume they locked him out, and

1 he was agitated. He wanted to get back in.

2 So he pulled the screen off. And at the  
3 same time he went up there and pulled the screen off,  
4 that's when I started walking towards the patio.

10:51:53 5 Q Okay.

6 A And I had told him at that time, "That's  
7 enough."

8 Q All right. Hold on.

9 So you see him physically pull the screen  
10:52:04 10 off the window?

11 A Right.

12 Q You're making some assumptions about why he  
13 may have done that. He may have been locked out of  
14 the house.

10:52:11 15 A I'm making some assumptions now.

16 Q Okay. That's fair.

17 MR. SHERMAN: Just tell us that. I mean --

18 MR. HENNESSEY: Yes. I mean, if you know  
19 exactly why he pulled the screen off, that's fine.

10:52:21 20 Okay. If you think you know why he pulled the screen  
21 off --

22 THE WITNESS: At the time, I didn't know  
23 why.

24 BY MR. HENNESSEY:

10:52:25 25 Q Okay. You just saw -- it was -- would you

1 say it was out-of-the-ordinary behavior?

2 A Yes.

3 Q Okay. And was it behavior that caused you  
4 to react in any certain way?

10:52:34 5 A Yes.

6 Q How did it cause you to react?

7 A I began walking towards the front porch.

8 Q When you say you began walking towards the  
9 front porch, walking towards the front porch of your  
10:52:44 10 house or his house?

11 A His house.

12 Q Okay. And why did you do that?

13 A I was going to try to, you know, calm him  
14 down and get him to not pull the screen off any  
10:52:53 15 more -- get him not to do anything else that's going  
16 to cause a problem.

17 Q Now, do you have any law enforcement  
18 experience?

19 A No.

10:53:01 20 Q Okay. Do you remember how Mr. Tran was  
21 dressed that day?

22 A Yes.

23 Q How was Mr. Tran dressed that day?

24 A He had a T-shirt and some shorts, kind of a  
10:53:10 25 thin shirt, thin shorts.

1 Q Okay. And the shorts themselves -- when you  
2 say "a thin shirt," are you talking about like the  
3 type of T-shirt that goes under a dress shirt or are  
4 you talking like a -- you know, the T-shirt the kids  
10:53:24 5 wear with the logos on them?

6 When you say "T-shirt," what type are you  
7 talking about?

8 A Yeah, a thin T-shirt. It probably had a  
9 logo, perhaps maybe like a gym shirt, something you'd  
10:53:35 10 wear in the gym.

11 Q Okay. And the shorts, are you talking about  
12 like basketball shorts? Cargo shorts? Some type of,  
13 you know, jean shorts? What type of shorts?

14 A These would be shorts that you'd wear in a  
10:53:49 15 gym, also, short, thin basketball shorts, let's say.

16 Q All right. Do you remember anything else  
17 about the way he was dressed?

18 A No.

19 Q Okay. When you made the decision to walk  
10:54:04 20 over there and move towards the porch in the fashion  
21 that you've said, was there anything about the manner  
22 in which Mr. Tran was dressed that led you to believe  
23 that he may be armed?

24 MR. SHERMAN: Objection; vague; ambiguous;  
10:54:20 25 assumes facts not in evidence; lacks foundation;

1 speculation.

2 THE WITNESS: His clothing was pretty  
3 flimsy, pretty thin. He wasn't hiding any weapons.

4 BY MR. HENNESSEY:

10:54:31 5 Q Okay. Meaning, like did he appear to have  
6 any bulges? I mean, he wasn't wearing like those  
7 kind of baggy gang-type clothing and stuff like that?

8 MR. SHERMAN: Compound.

9 THE WITNESS: No. As a matter of fact, his  
10:54:42 10 shirt was a little bit -- probably a little too small  
11 for him. So you could see his belly sticking out at  
12 times. I mean, he was a little bit -- he was a  
13 bigger guy.

14 BY MR. HENNESSEY:

10:54:51 15 Q Okay. Did you have any concerns, as you  
16 walked towards the house, that you may be walking  
17 towards an armed individual?

18 A No.

19 MR. SHERMAN: Objection; asked and answered.

10:54:59 20 BY MR. HENNESSEY:

21 Q Did you ever see -- other than the screen in  
22 his hand, you indicated you saw him take the screen  
23 off and do something with it, have it in his hands.

24 Other than the screen, did you see any other  
10:55:07 25 objects of any type in his hands?

1 A No.

2 Q Okay. So you walk over to the house.

3 And do you actually verbally say anything to  
4 him?

10:55:17 5 MR. SHERMAN: Objection; misstates  
6 testimony.

7 THE WITNESS: I didn't actually walk to the  
8 house. I proceeded -- I started to go, and I started  
9 to say some things; and it was pretty much  
10:55:25 10 simultaneous.

11 As I walked toward the house and as I began  
12 to tell him to "stop" or "that's about enough,"  
13 that's when the first officer arrived.

14 BY MR. HENNESSEY:

10:55:40 15 Q Okay. Now, you believe that the words you  
16 used were "stop" or "that's enough" to that effect?

17 A Yes.

18 Q Do you recall, was your voice raised?

19 A Yes.

10:55:49 20 Q Do you believe your voice was raised to a  
21 level where Mr. Tran would have been able to hear  
22 you?

23 A Yes.

24 MR. SHERMAN: Speculation; foundation;  
10:55:56 25 assumes facts not in evidence.

1 BY MR. HENNESSEY:

2 Q And do you recall how many times you may  
3 have used the words "stop" or "that's enough"?

4 A Just a couple.

10:56:05 5 Q Okay. When you say "a couple," are you  
6 talking one? Two? Three? Four?

7 A Probably once or twice for each.

8 Q All right. And did your voice get  
9 progressively louder? Did it stay the same tone?  
10:56:18 10 How would you describe it?

11 A It was a pretty firm tone right from the  
12 beginning.

13 Q So you were using a loud, firm voice with  
14 Mr. Tran?

10:56:24 15 A Yes.

16 Q And why did you choose to use a loud, firm  
17 voice with Mr. Tran?

18 A I wanted to get his attention.

19 Q Why did you want to get his attention?

10:56:33 20 A I wanted him to stop doing what he was  
21 doing.

22 Q And what, if anything, happened after --  
23 well, where did you get -- in relation to where you  
24 said you stepped behind, you know, to the rear of  
10:56:41 25 your truck originally and made some observations,

1 where did you get to ultimately when you were saying  
2 anything to Mr. Tran?

3 A I didn't get to the curb of his property,  
4 but I got past the middle of the street.

10:56:54 5 Q Okay. So you were somewhere between the  
6 middle and his curb when what happened?

7 A When the first officer pulled up on the  
8 scene.

9 Q All right. And the first officer who pulled  
10:57:06 10 up on the scene, did you see a marked patrol car?

11 A Yes.

12 Q And where did that marked patrol car park?

13 A He parked on Paloma Street. He would be  
14 going the other direction south towards Newhope, and  
10:57:21 15 the car was parked right next to my property.

16 Q Would it have been the -- it was parked  
17 adjacent to your property?

18 A Next to my property.

19 Q On Paloma Street?

10:57:31 20 A Yes.

21 Q Would the front of his vehicle -- what  
22 direction would the front of his vehicle be facing?  
23 Would it be facing towards Mr. Tran's house or away  
24 from Mr. Tran's house?

10:57:41 25 A Towards Mr. Tran's house.

1 Q How about the lights?

2 A I don't believe so, but I can't be  
3 100 percent sure of that.

4 Q What's the first thing that you recognize of  
11:00:11 5 that officer? Meaning, what's the first thing that  
6 you observed him do? Hear? What's the first  
7 thing --

8 A I looked at him, and I thought he was ready  
9 to take over the situation; and I was going to back  
11:00:21 10 off.

11 Q And what about the appearance of the first  
12 officer made you believe that he was ready to take  
13 over the situation and you were going to back off?

14 MR. SHERMAN: Speculation; foundation.

11:00:30 15 THE WITNESS: Well, he's an officer, and  
16 he's equipped to handle these situations. So that's  
17 when my -- I felt that's when my job was over --

18 MR. HENNESSEY: Okay.

19 THE WITNESS: -- as a neighbor or whoever.

11:00:41 20 MR. HENNESSEY: As a good citizen?

21 THE WITNESS: Yeah, whatever.

22 BY MR. HENNESSEY:

23 Q Did you hear the officer ever say anything?

24 A Yeah. He started right away giving  
11:00:51 25 commands.

1 Q Okay. Did he -- where was the officer in  
2 relation to Andy Tran's house from the position that  
3 you say the car was when you first heard him making  
4 any types of commands?

11:01:08 5 A I think as soon as he got out of the  
6 vehicle, he started, you know, commanding.

7 (Mr. Pham enters the deposition  
8 proceedings.)

9 BY MR. HENNESSEY:

11:01:15 10 Q When you say "commanding," what type of  
11 commands do you remember hearing?

12 A I think he had, you know, "stop."

13 MR. SHERMAN: I've got to be worried about  
14 "I think." That always calls for speculation. If  
11:01:31 15 you can recall, tell us. If you can't --

16 THE WITNESS: Yeah. As far as I remember,  
17 you know, it was basically the same types of things  
18 that I had said previously, "stop," um, you know,  
19 that kind of thing.

11:01:41 20 BY MR. HENNESSEY:

21 Q And was the officer speaking in the same  
22 type of tone that you were using, meaning a loud,  
23 commanding voice or was he soft-spoken? Casual?

24 A Oh, it was commanding.

11:01:53 25 Q Okay. Would you say -- again, was it of the

1 same level or, you know, loudness, for lack of a  
2 better word --

3 A Yes.

4 Q -- that you were describing?

11:02:02 5 A That's fair.

6 Q All right. Did Mr. Tran ever stop what he  
7 was doing, relating to what you saw him doing to the  
8 screen?

9 A Like I said, when I began walking over  
11:02:13 10 there, everything kind of happened a little  
11 simultaneously.

12 The officer arrived on the scene just about  
13 the time when I, like I said, I started to cross.  
14 And so things kind of stopped right then. As soon as  
11:02:23 15 the officer got out, things kind of stopped and --

16 Q When you say "things kind of stopped," what  
17 things kind of stopped?

18 A You know, I -- I'm going to -- in my  
19 opinion, I think Andy kind of came to himself. I  
11:02:40 20 think he was a little bit kind of off, and then I  
21 think he kind of realized that -- he kind of came to  
22 himself. Let me just say that.

23 Q What did you personally observe that makes  
24 you -- that leads you to believe that Andy came to  
11:02:55 25 himself or realized something was going on?

1 A Well, he directed his attention --

2 MR. SHERMAN: Let me just object as  
3 speculation; foundation; assumes facts not in  
4 evidence.

11:03:03 5 Sorry. Go ahead.

6 BY MR. HENNESSEY:

7 Q You say he directed his attention.

8 A He was directing his attention towards  
9 opening that window and getting in the house.

11:03:11 10 Q Okay.

11 A Okay. So all of a sudden, he stopped.

12 Q Okay.

13 A Okay. The screen was down on the porch. He  
14 kind of, you know, stopped being aggressive; and he  
11:03:24 15 kind of, you know, began to start paying attention to  
16 what was going on around him, I think.

17 Q What about what you saw of Mr. Tran leads  
18 you to believe that he started to pay attention about  
19 what was going on around him?

11:03:39 20 A It just looked like the aggravation factor  
21 was a little bit different. He wasn't trying to --  
22 like I said, he wasn't trying to get into the house  
23 anymore. He kind of -- I think he kind of realized  
24 things had kind of changed a little bit.

11:03:55 25 MR. SHERMAN: Speculation --

1 Q On Plaintiff's 4, you wrote a Z1 where you  
2 were. In relation to 4 to where you said the officer  
3 was on -- this is getting confusing -- Plaintiff's 3,  
4 if you look at 4 to 3, in your position from Z1 on 4  
11:14:34 5 to the position from officer and Andy in Plaintiff's  
6 3, how many feet would you say you were from the  
7 scene?

8 A 40 feet, maybe.

9 Q Okay.

11:14:43 10 A Maybe 50, at the tops.

11 MR. SHERMAN: 40 to 50 feet?

12 THE WITNESS: 40 feet probably, 50 tops.

13 BY MR. HENNESSEY:

14 Q Why did you move to the back of your truck  
11:14:53 15 when the police officer came there and stayed?

16 A I just moved back to that position because I  
17 felt like the officers had everything under control.

18 Q I mean, why not go back into your house?

19 MR. SHERMAN: Objection; relevancy;  
11:15:06 20 immateriality; speculation.

21 THE WITNESS: I just wanted to stay and  
22 watch and see what happened. You know, I mean, I'm  
23 right there and everything is happening, and I wanted  
24 to see.

11:15:14 25 BY MR. HENNESSEY:

1 officer, was he walking in what you would describe as  
2 an aggressive fashion like, you know, kind of a --  
3 how would you describe it?

4 MR. SHERMAN: Vague.

11:19:37 5 THE WITNESS: Andy wasn't upset. He was  
6 confused.

7 MR. HENNESSEY: Okay.

8 THE WITNESS: He wasn't aggressive in my  
9 opinion, and he complied with the officer. He had  
11:19:48 10 his hands on his head.

11 BY MR. HENNESSEY:

12 Q When you say that Andy looked confused, why  
13 do you use the word he said he looked confused?

14 A Well, he was kind of, you know, dealing with  
11:19:56 15 the situation with his family in the house, which I  
16 could see through the window the family inside there,  
17 and, you know, the officers are telling him to do one  
18 thing; and, you know, you could just kind of tell he  
19 was a little confused about what was going to happen  
11:20:11 20 or what was happening or any of that.

21 Q Okay. But did he look aggressive? Meaning,  
22 did he look like -- did he walk towards the officer  
23 in a fast pace?

24 THE WITNESS: I have to use the restroom.

11:20:24 25 MR. HENNESSEY: Oh, absolutely.

1 towards the officer was confusion?

2 MR. SHERMAN: Foundation; speculation;  
3 leading.

4 THE WITNESS: Yes. He seemed a little  
11:34:18 5 confused to me.

6 BY MR. HENNESSEY:

7 Q Now, you also said something about you can  
8 see that there was family inside the house?

9 A Yes.

11:34:25 10 Q How were you able to see any type of family  
11 inside the house?

12 A Through this front window that he pulled the  
13 screen off.

14 Q The one that you had previously marked on  
11:34:34 15 Plaintiff's 3 in A3?

16 A A3, yes.

17 Q In A3, the window looks like the shades are  
18 down?

19 A Right.

11:34:43 20 Q Would the shades have been up at the point?

21 A Either up or open, but I had a visual right  
22 into the house.

23 Q Could you see into the house whether the  
24 people inside were old, young, male, female?

11:34:58 25 A Well, I could see the old guy; and I just

1 know by look, you know. I didn't really -- couldn't  
2 see his face to tell you, you know, he was the  
3 50-year-old or he was the 20-year-old or whatever. I  
4 just know by looking at him. He was a little  
11:35:14 5 slouched down, and I've seen him before. So I  
6 assumed he was the older one.

7 Q When you say --

8 A He was there.

9 Q I'm sorry. When you say "the older one,"  
11:35:19 10 are you talking about --

11 A The dad.

12 Q Okay. Andy's dad?

13 A Yes.

14 Q Okay. How about Andy's mom? Did you ever  
11:35:26 15 see or hear a female?

16 A There was a woman in there.

17 Q Okay. Old? Young? Anybody that you had  
18 seen before? Like his wife?

19 A That, I couldn't tell you.

11:35:34 20 Q Okay. Could you hear voices coming from  
21 inside the house?

22 A I could hear something inside the house,  
23 meaning, that there was some life in there, you know.

24 Q Okay. Could you make out any words of any  
11:35:49 25 type that you heard coming from inside the house at

1 Q Would you say did he appear to be frothing  
2 at the mouth? Growling? Doing anything like that?

3 A On his way back to the officer, I don't  
4 recall that. No.

11:38:33 5 Q Okay.

6 A Standing in front of the officer, he had his  
7 back to me at that time, also.

8 Q Did you ever hear Andy say anything to the  
9 first officer at any time?

11:38:45 10 A I believe there was some communication, but  
11 I couldn't -- I couldn't hear exactly.

12 Q The question was: Could you personally hear  
13 with your own ears Andy Tran ever say any single word  
14 to the police officer at any point in time?

11:39:02 15 A I believe he was speaking.

16 Q Okay.

17 A But I don't know what he said.

18 Q Why do you believe he was speaking?

19 A I believe there was some communication back  
11:39:09 20 and forth between the officers and Andy.

21 Q And what -- what makes you believe that?

22 A I just -- what -- you know, I could hear it,  
23 but I couldn't hear exactly. I could hear some --  
24 you know, as Andy was close to the officers, there  
11:39:24 25 was some verbal back and forth, I believe.

1 Q Okay.

2 A But I couldn't tell what it was.

3 Q Meaning, you couldn't hear what the officer  
4 was saying to Andy or what Andy was saying to the  
11:39:34 5 officer, but they seemed to be communicating in some  
6 fashion?

7 A It seemed like there was some communication.

8 Q Okay. At any point in time while Andy was  
9 walking back towards the officer, did he, you know,  
11:39:46 10 pick up his pace towards the officer?

11 Did he ever, you know, get in like a more  
12 aggressive stance to walk towards the officer?  
13 Anything like that?

14 MR. SHERMAN: Vague; compound.

11:39:57 15 THE WITNESS: No. And I feel like if there  
16 was a problem between the time Andy was on the porch  
17 and the time he got back to the officer, I believe  
18 the officer would have took some action; but it just  
19 seemed like it was a little bit routine in that way,  
11:40:12 20 and he ended up in front of the officer.

21 BY MR. HENNESSEY:

22 Q And you're pointing to People's 3. You said  
23 Andy ended up in front of the officer.

24 A Andy ended up in front of the officer, and  
11:40:20 25 then it seemed a little bit routine, you know, like

1       there was -- he was going to be arrested; and this  
2       was just, you know, how it was.

3               I didn't see any sign of him frothing at the  
4       mouth or, you know, anything like that. It just  
11:40:35 5       seemed a little bit routine. He ended up in front of  
6       the officer, and then he had his hands on his head.

7               And so, in my own mind, I just assumed,  
8       yeah, they're going to probably handcuff him and away  
9       he goes.

11:40:47 10       Q       From the time that you saw Andy walk towards  
11       the officer until the time that you saw the officer  
12       with his hands on his head with Andy facing towards  
13       his house, did you see anything that in your mind  
14       looked like an aggressive move from Andy towards  
11:41:01 15       Officer 1?

16       A       No.

17               MR. SHERMAN: Objection; asked and answered;  
18       vague and ambiguous; overbroad in both scope and  
19       time.

11:41:03 20       THE WITNESS: No.

21       MR. HENNESSEY: No. Okay.

22       BY MR. HENNESSEY:

23       Q       And when I say "aggressive," I'm talking  
24       about like leaning his shoulder into the officer or,  
11:41:11 25       you know, putting his fists up, you know, trying to

1 kick at him, knee him? He pushed back on him?

2 Did you see anything like that on him?

3 MR. SHERMAN: Foundation; speculation.

4 THE WITNESS: It seemed to me that the

11:41:22 5 officer had him in control.

6 BY MR. HENNESSEY:

7 Q Okay. And when you say that "it seemed that  
8 the officer had him in control," what are you seeing  
9 that leads you to believe that the officer seemed to  
11:41:33 10 have Andy in control at the time that you've  
11 described?

12 A His hands were on his head. He seemed to be  
13 complying. Like I said, I didn't hear what was said;  
14 but, obviously, his hands were on his head, and the  
11:41:44 15 officer had his hands on top of Andy's hands. So I  
16 just assumed that everything is under control.

17 Q Was the voice that the officer used when he  
18 exited his car and you say when he directed his  
19 attention to when Andy was on the porch, was he using  
11:42:00 20 that same tone of voice when he was with Andy in the  
21 position that you've described them in in People's 3?

22 A No.

23 MR. SHERMAN: Foundation.

24 BY MR. HENNESSEY:

11:42:08 25 Q What was the difference between the tone of

1 going on?

2 A No.

3 MR. SHERMAN: Objection; asked and answered.

4 BY MR. HENNESSEY:

11:43:02 5 Q And you were in the same position at both  
6 times; correct?

7 A Yes.

8 Q Okay. So the tone from the officer got  
9 lower when he was with Andy with his hands on Andy?

11:43:11 10 A Yeah and -- yes. And I just assumed that  
11 everything had kind of come to an end here.

12 Q Now, why would you assume that --

13 MR. SHERMAN: I'll move to strike as  
14 nonresponsive.

11:43:21 15 BY MR. HENNESSEY:

16 Q Why did you assume that everything now had  
17 come to an end?

18 A It just seemed like the officer had him in  
19 control. And, like I just said, I just thought  
11:43:30 20 they'd throw the cuffs on him and throw him in the  
21 car. That would be it.

22 I didn't see -- I didn't see anything happen  
23 and really to lead me to believe that head for the  
24 hills. There is bad stuff going to happen. You know  
11:43:42 25 what I mean? I just thought everything was under

1 THE WITNESS: -- what I've seen in the past.  
2 You know, when officers -- this guy seemed like he  
3 had everything under control. I mean, it looked  
4 pretty standard to me.

11:44:33 5 BY MR. HENNESSEY:

6 Q Okay. Did you have any concerns that, hey,  
7 this is going to turn violent from the police towards  
8 Andy or Andy towards the police?

9 A No. Like I said, I just thought everything  
11:44:42 10 was coming to a close here.

11 Q Okay. And how long would you say from the  
12 time the officer exited his car until he got his  
13 hands on top of Andy's -- until he got Andy's hands  
14 on top of his head with one of his hands on top of  
11:44:59 15 Andy's head and his other hand free?

16 How much time do you think passed?

17 A It couldn't have been more than a minute or  
18 a minute and a half.

19 Q Okay.

11:45:05 20 A I mean, it was pretty short.

21 Q Okay. And during -- from the time that the  
22 officer first arrived on scene, how long did it take  
23 for Andy to go from, you know, the screen facing that  
24 to appearing to recognize that the police were there,  
11:45:22 25 somebody was there?

1 speculation; foundation.

2 BY MR. HENNESSEY:

3 Q So at the time that the first officer is  
4 there alone with Andy, you didn't see any problems at  
11:46:27 5 all between -- appearing to be between that officer  
6 and Andy or Andy and that officer?

7 A No.

8 MR. SHERMAN: Objection; asked and answered;  
9 vague; compound.

11:46:36 10 BY MR. HENNESSEY:

11 Q You didn't see any aggressive acts between  
12 Andy and the first officer or the first officer and  
13 Andy during that time?

14 MR. SHERMAN: Objection; vague; asked and  
11:46:42 15 answered.

16 THE WITNESS: Just that, you know, Andy  
17 standing with his hands on his head. He is moving a  
18 little; but, you know, the officer is moving a  
19 little.

11:46:52 20 But, like I said, I didn't see anything that  
21 caused me concern, you know, that it's time to head  
22 for the hills, like I said, or things are getting out  
23 of control or whatever.

24 BY MR. HENNESSEY:

11:47:01 25 Q When you say they're both moving a little,

1 officer? Like, "Are you okay?" "Do you need help?"  
2 Anything like that?

3 A I don't recall anything like that.

4 Q Okay. When he took a position up in front  
11:52:03 5 of Andy, would it be fair to say that Officer 1, the  
6 first officer, was behind Andy? The second officer  
7 comes and stands in front of Andy?

8 A Yes.

9 Q And then what, if anything, does the second  
11:52:14 10 officer do?

11 A He's in front of Andy, and there was some  
12 communication; and I really don't -- like I said, I  
13 don't know what the communication was. I don't know.  
14 It could have been anything, but it didn't take long  
11:52:29 15 for this second officer to come around the side of  
16 him and pull his Taser out and shoot him in the leg.

17 Q Okay. Just -- we're going to take it step  
18 by step.

19 A All right.

11:52:39 20 Q The second officer arrives, and you say that  
21 he takes up a position in front of Andy?

22 A That's right.

23 Q You say that you believed there was some  
24 communication going on.

11:52:48 25 What do you base that on? Meaning, can you

1 Anything?

2 Did you see anything like that?

3 MR. SHERMAN: Compound; speculation; lacks  
4 foundation; assumes facts not in evidence.

11:54:34 5 THE WITNESS: I didn't see anything  
6 different than what had already been going on.

7 BY MR. HENNESSEY:

8 Q Okay. So when the second officer arrived,  
9 things seemed to just kind of remain the same?

11:54:42 10 A No, not exactly.

11 Q What changed?

12 A As far as Andy goes, yeah, everything kind  
13 of the same; but I think this second officer brought  
14 a different level of -- a different level of  
11:55:00 15 commitment, stress, something to the situation.

16 Q What do you mean by that?

17 A You know, are we to the point where he's in  
18 front of Andy and then he comes beside him and Tasers  
19 him?

11:55:11 20 Q No. Let's just say while he's in front of  
21 him. Just stick with while he's in front of him.  
22 You said that he had brought a different type of  
23 level or stress or whatever.

24 What are you basing that statement on?

11:55:19 25 A I'm basing that on his old action, not just

1 from standing in front of Andy; but after that,  
2 Tasing him.

3 Q Okay. Let's go back to him standing in  
4 front of him.

11:55:28 5 You said that the first officer did  
6 something with his hands. I'm sorry. The second  
7 officer did something with his hands.

8 What did you see the second officer do with  
9 his hands?

11:55:36 10 A He put them up there with Andy's --

11 Q Okay.

12 A -- you know, and, you know, the first  
13 officer had Andy's hands; and the second officer had  
14 Andy's hands, but the hands were on his head. Now, I  
11:55:53 15 don't know what the intention was, and I don't know  
16 what the communication was.

17 It could be Andy, you know, maybe didn't  
18 want his hands on his head. I don't know. I'm just  
19 going to assume that this officer was there to help  
11:56:04 20 the other officer. That's what I saw.

21 And it looked like everything was way under  
22 control. I mean, the first officer had everybody  
23 under control. This guy shows up, and it seemed like  
24 the stress level went up a little bit.

11:56:16 25 Q Okay.

1 that?

2 MR. SHERMAN: I'm going to object as it's  
3 compound. It's vague and ambiguous. It assumes  
4 facts not in evidence, calls for speculation.

11:57:24 5 THE WITNESS: I don't recall.

6 BY MR. HENNESSEY:

7 Q I mean, do you ever recall what appeared to  
8 be the officer struggling at any time with Andy's  
9 arms, body, legs? Anything?

11:57:34 10 MR. SHERMAN: Same objections.

11 THE WITNESS: Well, I don't know what  
12 happened with that. All's I know is his hands were  
13 on his head the whole time.

14 Now, if I wanted my hands off of my head,  
11:57:46 15 you know, I could probably get them off a little bit;  
16 but, you know, I mean, his hands were on his head the  
17 whole time; and that's all I know.

18 I don't know how much there was a real  
19 struggle going on. You had two officers there. And  
11:57:56 20 if there even was a struggle, I'm not real sure.

21 BY MR. HENNESSEY:

22 Q Do you remember from reading any of your  
23 statements, from reading anything, do you ever  
24 remember describing to any person that you ever saw  
11:58:06 25 any resistance from Andy of any type?

1 hands on his head. I didn't see any escalation that  
2 way.

3 BY MR. HENNESSEY:

4 Q You didn't see any struggling between the  
11:59:26 5 officer and Andy or --

6 A No.

7 Q -- anything?

8 MR. SHERMAN: Vague; asked and answered.

9 THE WITNESS: No.

11:59:30 10 BY MR. HENNESSEY:

11 Q Did you ever see what appeared to be  
12 attempts by any of the officers to sweep Andy's legs,  
13 to kick under his legs from out from under him?

14 Did you ever see any attempts of any officer  
11:59:39 15 to do something like that?

16 MR. SHERMAN: Foundation; speculation;  
17 compound.

18 THE WITNESS: No.

19 BY MR. HENNESSEY:

11:59:44 20 Q Did you ever see the officers appear to work  
21 together to try to gain control of Andy and throw him  
22 to the ground?

23 Any actions like that?

24 A No.

11:59:51 25 Q Okay.

1           A     Officer No. 1 had -- in my opinion, had  
2     control of the situation.

3           Q     Okay. And then something changed when  
4     Officer 2 arrived?

12:00:00 5           A     Something changed. Now, you can say  
6     whatever you want. I mean, yeah, there might have  
7     been words. There might have been this. There might  
8     have been that, but I saw him with his hands on his  
9     head the whole time. And, like I said, it didn't  
12:00:14 10    escalate beyond that.

11          Q     And there was never any loud words?

12          A     No. Nothing like in the beginning where  
13    you're giving commands and you're -- you know.

14          Q     When the first officer arrived and commanded  
12:00:24 15    "Come on," "walk towards me," "put your hands on your  
16    head," I mean, you heard those commands very clearly?

17          A     I heard them.

18                MR. SHERMAN: Objection; asked and answered.  
19    BY MR. HENNESSEY:

12:00:32 20          Q     But after that point in time between both of  
21    these officers, okay, there was never that level of  
22    commanding authority voice that you ever heard again?

23          A     No.

24                MR. SHERMAN: Foundation; asked and  
12:00:40 25    answered.

1 BY MR. HENNESSEY:

2 Q In fact, you could never hear a single word  
3 said by the second officer at any time prior to the  
4 time he deployed his Taser against Andy?

12:00:53 5 A Nothing that I could understand, no.

6 Q So you see -- well, how long was the second  
7 officer there before he Tasered Andy?

8 A Pretty quickly. Right in front of Andy, it  
9 seemed like the officer was, I would say, a little  
12:01:12 10 frustrated about something and immediately got to  
11 Andy's side and pulled out his Taser and hit him in  
12 the leg with it.

13 Q Did the officer appear to stand in front of  
14 Andy for any length of time and appear to be holding  
12:01:26 15 the Taser at Andy for 5, 10, 15 seconds and appearing  
16 to be saying anything to Andy?

17 A I didn't see that.

18 Q Okay. What did you see?

19 A I saw the Officer 2, the one that was in  
12:01:40 20 front of Andy, move around to the side. He pulled  
21 out his Taser and pulled the trigger.

22 Q Did you see the first officer ever move?

23 A No. He had ahold of Andy's hands.

24 Q So the first officer remained in the same  
12:01:53 25 position --

1 A Right behind -- I'm sorry.

2 Q It's okay. It's all right.

3 The first officer remained in the same  
4 position right behind Andy with his hands on his head  
12:02:04 5 the entire time the second officer came and then took  
6 out his Taser and shot Andy in the leg -- shot Andy  
7 somewhere?

8 A Right.

9 MR. SHERMAN: Vague, speculation.

12:02:16 10 BY MR. HENNESSEY:

11 Q Okay. So you never saw the first officer  
12 move during this entire time?

13 MR. SHERMAN: Vague, speculation.

14 THE WITNESS: No. Everything pretty much  
12:02:23 15 stayed the same as far as Andy's position,  
16 Officer 1's position. The only thing that changed  
17 was the second officer's position.

18 BY MR. HENNESSEY:

19 Q Okay. And that was going from the front to  
12:02:30 20 the side to that?

21 A Right.

22 Q Now, when you say he went from the front to  
23 the side, I mean, how many seconds did it take from  
24 the officer to go from the front, take out -- well,  
12:02:40 25 did you actually see him take out something?

1 the side of Andy and Tasered him?

2 A Less than five seconds. I mean, it was  
3 pretty fast.

4 Q Okay. So would it be fair to say -- when  
12:03:39 5 did he take his Taser out? When he was in front of  
6 Andy or when he got to the side of Andy?

7 A It looked like when he was coming around the  
8 side of Andy.

9 Q Okay. And then just pulled the trigger?

12:03:50 10 A Yeah.

11 MR. SHERMAN: Speculation; foundation.

12 THE WITNESS: I don't think Andy really even  
13 saw that Taser, to tell you the truth. Because the  
14 officer came around the side of him. He might have  
12:04:00 15 seen him out of his side vision, but I don't think he  
16 really knew it until --

17 BY MR. HENNESSEY:

18 Q Did it appear that Andy had a lot of  
19 opportunities to look at the Taser before it was shot  
12:04:11 20 at him?

21 A No.

22 Q Because you said that this happened in  
23 seconds?

24 A Yeah. It was pretty quickly.

12:04:16 25 Q Okay. And then what happened?

1 A As I recall, Andy just dropped to the  
2 ground.

3 Q How do you recall Andy dropping to the  
4 ground?

12:04:31 5 A He dropped to his knees first and then fell  
6 face first into the grass.

7 Q When you say he fell to his knees first and  
8 fell down to the grass, did he -- did you see him do  
9 anything with his hands, like try to break his fall  
12:04:47 10 or anything like that?

11 A No.

12 Q Okay. How would you describe, to the best  
13 of your recollection, the way that Andy's body fell?

14 Meaning, did it fall gently, forcefully,  
12:04:57 15 somewhere in between?

16 MR. SHERMAN: Objection; vague; speculation;  
17 compound.

18 THE WITNESS: Well, Andy was a little  
19 overweight. And when he hit the ground there, you  
12:05:06 20 know, you could see his fat kind of move a little  
21 bit. You know, there was nothing really protecting  
22 him from falling to the ground. I mean, he just fell  
23 like a bag of potatoes, you know. He just -- that's  
24 it.

12:05:18 25 BY MR. HENNESSEY:

1 Q Did it appear that either one of the  
2 officers were trying to gently place Andy onto the  
3 ground after the Tasing?

4 MR. SHERMAN: Foundation; speculation.

12:05:26 5 THE WITNESS: No. I don't think they could  
6 have, even if they tried. He just fell like that.

7 BY MR. HENNESSEY:

8 Q Okay. So you didn't see anything that  
9 appeared to be either one of the officers trying to  
12:05:37 10 gently guide Andy's body from being Tasered gently  
11 down onto the ground?

12 A No.

13 Q And Andy is -- was a pretty big guy?

14 A He was a bigger guy. Yeah.

12:05:46 15 Q Okay. So when you saw Andy, you know, hit  
16 his knees and go face down, did you ever see Andy --  
17 did you see -- well, what did you see next?

18 A Um, he just -- he was just there and then  
19 the officers cuffed him and, you know, of course,  
12:06:07 20 there was no resistance. Why would there be?

21 Q Why wouldn't there be any resistance at that  
22 point?

23 Why do you say there wouldn't be any  
24 resistance at that point when Andy was down on the  
12:06:17 25 ground like that?

1           A     When somebody gets Tasered and any time I've  
2     ever seen it, you know, the body gets a jolt. I  
3     mean, you see the officers in a car and somebody  
4     won't comply, they're in there jumping around and  
12:06:28 5     jolting around and "No, Dude, don't Tase me." I  
6     mean, we've all seen that video.

7                     As soon as this guy gets the Taser, in my  
8     opinion, he's dead. It shocked the life out of him  
9     or something. There was no flinch. There was no  
12:06:41 10    electric jolt. This guy dropped like a bag of  
11    potatoes. I mean, that's all there was to it. I  
12    mean, when he hit the ground, in my opinion, he was  
13    dead.

14           Q     Why do you say that?

12:06:50 15           A     Because I feel like he was dead.

16                     MR. SHERMAN: Foundation; speculation.

17           BY MR. HENNESSEY:

18           Q     When you say that you feel that he was dead,  
19    did you see --

12:06:56 20           A     There was no life in him.

21           Q     What do you mean by that?

22           A     There was no flinching. There was no -- his  
23    stomach wasn't moving. His chest wasn't moving.  
24    There was no flinching of the body at all, you know.  
12:07:09 25    Everything was still, and that was -- it was like it

1 was done. I was kind of in shock.

2 Q Okay. Why were you kind of in shock?

3 A Because I thought this guy is probably dead  
4 laying there now, you know. And I'm looking at it,  
12:07:23 5 and there is nothing going on; and I felt --

6 Q When you say "there is nothing going on,"  
7 what do you mean "there is nothing going on"?

8 A There is nothing going on with Andy.

9 Q Okay.

12:07:31 10 A There is no breathing. You know, I'm  
11 looking at -- like I said, his stomach. His shirt is  
12 up, you know. You can see his bare stomach and, you  
13 know, his shorts are there; and, you know, you could  
14 just see -- I mean, the guy didn't have any clothes  
12:07:46 15 on hardly. He just had a short and light T-shirt,  
16 and, you know, he's just laying there and pretty  
17 lifeless.

18 Q You say "pretty lifeless."

19 Did you ever see any signs of life from Andy  
12:07:54 20 after the time he went down in the manner that you  
21 described?

22 A None.

23 MR. SHERMAN: Vague; speculation;  
24 foundation.

12:08:02 25 MR. HENNESSEY: None.

1 THE WITNESS: Nothing that I could really  
2 detect, no. Nothing enforceful or a loud voice, no.

3 BY MR. HENNESSEY:

4 Q How about in time frame?

12:13:35 5 A Excuse me?

6 Q From what you described before from the time  
7 frame that you described, you say he basically walked  
8 to the side, took out his Taser, and fired?

9 A Right.

12:13:45 10 Q I mean, was there any hesitation from the  
11 time he took his Taser out?

12 Did he wait for any period of time before  
13 firing?

14 MR. SHERMAN: Objection; vague;  
12:13:53 15 argumentative; compound.

16 THE WITNESS: When he got around to the side  
17 of him, it was instantaneous.

18 MR. HENNESSEY: Okay.

19 THE WITNESS: He pulled it out and shot him  
12:13:59 20 right then. I mean, there was no, you know, "wait"  
21 or no communication that I can remember.

22 BY MR. HENNESSEY:

23 Q Okay. Certainly no loud commanding "knock  
24 it off or I'm going to Tase you" or --

12:14:08 25 A No.

1 MR. SHERMAN: Objection; asked and answered;  
2 vague.

3 THE WITNESS: No.

4 By MR. HENNESSEY:

12:14:12 5 Q Anything like that?

6 A No.

7 Q And it was very fast, as you described?

8 A It was very fast. And going back to the  
9 stress level that the second officer brought, the  
12:14:21 10 only thing that I can -- the only thing that I could  
11 describe it at the time was this cavalier cowboy  
12 attitude.

13 Q What do you mean by that?

14 A I mean --

12:14:31 15 MR. SHERMAN: I'll move as no question  
16 pending.

17 THE WITNESS: "Here I am." And, you know,  
18 "I'm going to get my way," and "damn the torpedoes,"  
19 you know.

12:14:40 20 You know, this guy seemed a little bit  
21 cowboy to me; but I don't know. I mean, that's just  
22 the attitude I say. Meaning, you know, I do what I  
23 want when I want to do it and I don't really care,  
24 you know. And, you know --

12:14:53 25 MR. SHERMAN: What do you base that on?

1 THE WITNESS: I'm reading a lot into that.  
2 I'm reading a lot into that, but it's the attitude I  
3 felt. That's all I can say.

4 BY MR. HENNESSEY:

12:15:01 5 Q Just the general things that you saw between  
6 what you saw, the actions by the first officer --

7 A Yeah.

8 Q -- the way he handled the scene --

9 A Yes.

12:15:10 10 Q -- versus the way the second officer handled  
11 the scene?

12 A Exactly.

13 Q Is that fair?

14 A The first one seemed -- it seemed, like I  
12:15:15 15 said, very routine, very professional. The second  
16 one seemed pretty cowboy-ish.

17 Q And when you say he seemed cowboy-ish, what  
18 do you mean?

19 A I mean --

12:15:24 20 MR. SHERMAN: Speculation; foundation.

21 THE WITNESS: -- kind of a little bit of  
22 a -- kind of a -- I don't know, just kind of a wild  
23 card, let's say. You know, just had this attitude  
24 that, you know -- you know, it seemed a little  
12:15:42 25 unprofessional to me.

1 BY MR. HENNESSEY:

2 Q What about it seemed unprofessional about  
3 what you saw him do?

4 MR. SHERMAN: Objection; misstates  
12:15:49 5 testimony; speculation; vague.

6 THE WITNESS: Just that everything was a  
7 little abrupt, you know. I don't think he had to go  
8 to this extent. And when Andy was sitting on the  
9 ground with his torso leaning against the officer,  
12:16:04 10 you know, he reached down and said, "Don't be faking  
11 it here," and he started --

12 BY MR. HENNESSEY:

13 Q Hold on. Hold on.

14 Who said what?

12:16:11 15 A This is the same officer that when Andy was  
16 on the ground up against the officer's leg, he  
17 reached down and he apparently thought Andy was  
18 faking this situation where he wasn't moving. He's  
19 faking the fact that he's out cold or whatever the  
12:16:28 20 case may be, and he did hit him in the face a couple  
21 times, slight, not strong, not like I'd slap somebody  
22 in the face if they offended my wife or anything like  
23 that, just like "wake up," "wake up," you know, that  
24 type of thing.

12:16:41 25 Q Okay.

1 A And that type of attitude. That's why I say  
2 that.

3 Q Okay.

4 A It's the whole picture, not just because he  
12:16:49 5 shot him with a Taser. People get shot with a Taser  
6 by professional officers all the time. I'm just  
7 putting the whole thing together and saying this guy  
8 seemed a little bit out of line to me.

9 Q Based upon everything that you've already  
12:17:03 10 said?

11 A Yes.

12 MR. SHERMAN: I'll move to strike.

13 BY MR. HENNESSEY:

14 Q When you saw the second officer, the one who  
12:17:08 15 Tasered him, slap Andy in the face in the manner that  
16 you described, kind of not hard like you're, you  
17 know, trying to -- like if somebody, as you put it,  
18 offended your wife, you know, you're not going to do  
19 that.

12:17:20 20 What exactly did you see in relation to any  
21 attempts to determine Andy's health?

22 A None.

23 Q You saw the slap on the face.

24 Other than that, did you see anything from  
12:17:34 25 these officers -- have you ever seen on television,

1 little more concern as time went on. We're talking,  
2 you know, as time went on, maybe a minute or two.

3 Q What was happening during that minute or two  
4 with Andy?

12:18:42 5 A Nothing.

6 Q When you say "nothing," did you see any  
7 signs of life from the time that Andy went down after  
8 being Tasered until this minute or two later?

9 MR. SHERMAN: Objection; asked and answered;  
12:18:48 10 vague and ambiguous; calls for speculation; lacks  
11 foundation.

12 THE WITNESS: No.

13 BY MR. HENNESSEY:

14 Q When you saw Andy resting --

12:18:53 15 MR. SHERMAN: Expert opinion, too.

16 BY MR. HENNESSEY:

17 Q When you saw Andy resting against this  
18 officer's leg, could you see his chest?

19 A Yes.

12:19:02 20 MR. SHERMAN: Objection; vague.

21 BY MR. HENNESSEY:

22 Q Could you see his chest going up and down?

23 A No.

24 Q Could you see any heavy breathing from Andy  
12:19:06 25 at any point?

1           And then after I spoke with the family, I  
2       felt, you know, I'm either going to not say anything  
3       and go on my merry way or, you know, do the right  
4       thing. Here I am.

01:15:04 5       BY MR. HENNESSEY:

6           Q     You're under subpoena.

7                     You don't want to be here; is that true?

8           A     Well, I've got other things better to do  
9       than this.

01:15:10 10          Q     But, I mean, you are here under a subpoena?

11          A     Yeah. I have the subpoena right here.

12          Q     And would it be fair to say that you would  
13       prefer to not be involved in this case?

14          A     Yeah. Sure. I've got my own life. I don't  
01:15:25 15       need all this. As a matter of fact, there was  
16       several reporters come to the area and, you know, I  
17       refused to talk to anybody. I didn't want to have  
18       anything to do with it. I had not planned to have  
19       this -- have it come to this point or anything like  
01:15:43 20       that. I just wanted it all go away.

21          Q     Do you remember me asking you this question,  
22       did you ever see any attempts for like one police  
23       officer to try to grab one of Andy's arms and the  
24       other police officer to try to grab the other arm and  
01:15:58 25       try to put his hand behind his back? Did you see

1 any? And your response, "no."

2 Do you remember that?

3 A Uh-huh. Yes.

4 MR. SHERMAN: Objection; foundation; assumes  
01:16:04 5 facts not in evidence; asked and answered.

6 BY MR. HENNESSEY:

7 Q When you told me that, was that truthful?

8 A Yes.

9 Q And do you recall saying, "I didn't see the  
01:16:10 10 officers try to force his hands down. You know, like  
11 it happened pretty quick"?

12 Do you remember saying that?

13 MR. SHERMAN: Objection --

14 THE WITNESS: Yes.

01:16:18 15 BY MR. HENNESSEY:

16 Q Was that truthful?

17 MR. SHERMAN: -- the document speaks for  
18 itself.

19 THE WITNESS: Yes.

01:16:23 20 MR. SHERMAN: You're not going to go through  
21 the entire hour and something?

22 MR. HENNESSEY: No.

23 MR. SHERMAN: Okay. Thank you.

24 MR. HENNESSEY: I'm actually almost done,  
01:16:32 25 so. I actually may be done if you can just give me

1 do the right thing.

2 When you spoke to them, how long was that  
3 meeting?

4 A I think they came in, and they were there  
01:58:52 5 for maybe, I don't know, half an hour, probably.

6 Q Was there crying going on? Tears? Things  
7 of that nature?

8 A Um, the nephew, I don't remember there being  
9 any tears. I think the father might have been upset,  
01:59:08 10 but I don't recall -- you know, I think there was  
11 some choking back, but I don't remember anybody just  
12 breaking down.

13 Q Not that you can recall?

14 A Not that I can recall.

01:59:17 15 Q Okay. You've made it very clear. I'm going  
16 to draw -- we're going back to the first officer and  
17 Mr. Tran.

18 You've made it very clear that at all times  
19 Mr. Tran had his hands on his head?

01:59:31 20 A As far as I can remember.

21 Q Right. And you never saw his hands move  
22 from that?

23 A I don't think they really could move from  
24 that position.

01:59:39 25 Q Why?

1           A     Well, the officer had his hands on there. I  
2     think I would have -- you know, it would have caught  
3     my attention if there would have been some thrashing  
4     around or, you know, this kind of thing. Like I  
01:59:52 5     said, everything seemed pretty routine.

6           Q     Okay. How long was Mr. Tran's hands on top  
7     of his head?

8           A     Not very long.

9           Q     How long?

02:00:03 10          A     Um, as he walked back, he probably stood  
11     there probably a minute or so.

12          Q     So his hands were on top of his head for  
13     about a minute?

14          A     Or so.

02:00:14 15          Q     Or so. And when you say "or so," what does  
16     that mean?

17          A     That means the officer -- the other officer  
18     came, and then his hands were still on his head and  
19     everything happened pretty quickly, you know.

02:00:25 20                 And then as soon as he got Tasered, of  
21     course, his hands weren't on his head anymore.

22          Q     Right. Let's go --

23          A     Everything happened real fast.

24          Q     Let me back you up, if I can, before that.

02:00:34 25                 How long are Mr. Tran's hands on top of his

1 head before the second officer arrives?

2 A Um, not very long. I mean, that second  
3 officer -- as soon as the officer had his hands on  
4 Mr. Tran's hands, the other officer arrived.

02:00:49 5 Q Okay. And how long do you think that the  
6 first officer had his hands on Mr. Tran's hands?

7 A I think everything happened, it was about a  
8 minute or so.

9 Q So Mr. Hands -- Mr. Tran's hands --

02:01:05 10 A I got you.

11 Q Thank you. I'm glad you do.

12 Mr. Tran's hands are on top of his head for  
13 about a minute before the first officer -- second  
14 officer arrived?

02:01:11 15 A Yes, not very long in total. Because, like  
16 I said, everything happened pretty quick. I mean,  
17 the officer got Mr. Tran back, got his hands on his  
18 head, and the other officer was there very quickly,  
19 and then -- yeah, probably a minute or so.

02:01:24 20 Q And that's what I'm trying to figure out.

21 How long were Mr. Tran's hands on top of his  
22 head before the second officer arrived? About a  
23 minute or so?

24 A Before the second officer arrived?

02:01:34 25 Q Or --

1 wasn't like right next to him. He'd come around to  
2 the side, but he probably left about a three-foot gap  
3 there.

02:09:31 4 Q Is that when he put his hands on top of each  
5 other?

6 A No.

7 Q When were his hands on top?

8 A When he was in front.

02:09:36 9 Q Okay. Going to the side is when he Tasered  
10 him?

11 A Yes.

12 Q Okay. How long did he have his hands on top  
13 of Mr. Tran's hands?

14 A Not long.

02:09:40 15 Q How long?

16 A Maybe, I don't know, 20 seconds, not very  
17 long.

18 Q Do you know what he was doing with his hands  
19 on top?

02:09:48 20 A I just assumed he was -- I don't know. I  
21 just assumed he was keeping control of the guy there,  
22 Mr. Tran, keep more control of him.

23 Q Did Mr. Tran look like he was out of  
24 control?

02:10:05 25 A No, not really. I felt like the first

1 A It wasn't on his head. No.

2 Q Okay. Where was it?

3 A It was just -- I don't know what it was  
4 doing. It wasn't doing anything significant. I  
02:34:26 5 mean, if he would have had a gun in his hand or a  
6 billy club or something like that, I probably would  
7 have paid more attention, but I didn't.

8 Q Okay. I understand.

9 A But I don't think there was really much  
02:34:35 10 going on there. I think he had his hand free just in  
11 case, in case he needed to use his other hand for  
12 some other reason.

13 Q Was it down to his side?

14 A More towards his side probably, yeah, I  
02:34:46 15 would say. Because I didn't notice it being up above  
16 his head or anything.

17 Q "Probably" always concerns me.

18 So was it your best estimate that it was  
19 probably to his side?

02:34:54 20 A Yes. That's my best estimate.

21 Q Okay. So we have the first officer with his  
22 left hand on top of Andy's hands. We have his right  
23 hand probably down by his side. We have the second  
24 officer with his hands on Mr. Tran's hands.

02:35:11 25 A Hand, probably his hand. I only saw him put

1 Q Okay. But you can't tell us which hand?

2 A No.

3 Q What was he doing with his other hand then  
4 if it was only one on top?

02:36:15 5 A I don't know. I don't recall.

6 Q Was it to his side?

7 A I don't recall that, either.

8 Q Anything in his hands -- the other hand at  
9 that time?

02:36:21 10 A Not that I noticed.

11 Q Did you ever see slight body movements of  
12 the officers going a couple of inches in one  
13 direction or the other?

14 A Oh, yes. Both -- everyone had some slight  
02:36:31 15 body movements.

16 Q Okay. And what do you mean by that?

17 A You know, I mean, they weren't standing  
18 there like statues, you know. You had, you know, the  
19 officer in front and one behind; and there is some  
02:36:45 20 body movement, you know. I mean, it's nothing like I  
21 said out of the ordinary. Nothing that's going to  
22 catch your attention.

23 Q Nothing violent?

24 A Nothing real violent, no. Nothing violent,  
02:36:56 25 just minimal body movement, you know. A couple, you

1 really basically stood in one spot; and he didn't  
2 move from that one spot.

3 Q Okay. And when you say "move from that  
4 spot," you're talking about his feet; correct?

02:38:10 5 A Right.

6 Q Let's talk about his upper portion of his  
7 body. Is it like moving and swaying a little bit?

8 A Um, a little bit.

9 Q Nothing extraordinary? No violent  
02:38:22 10 gyrations; correct?

11 A No. There is no crazy stuff going on. No,  
12 just some movement, moving around.

13 Q How so?

14 A Um, slight body movements. You know, the  
02:38:33 15 guy's got his hands on his head. Like I said, they  
16 check themselves. I mean, you've got to stay in  
17 balance. You've got one hand, and your legs are  
18 spread. You're an officer. You've got your hands on  
19 your head. You know, everybody is slightly moving  
02:38:45 20 around, trying to keep their balance probably, you  
21 know, that kind of thing, just standing upright.  
22 Everybody is just moving slightly.

23 Q Okay.

24 A Just normal movements for a guy that you  
02:38:58 25 have ahold of, and you're standing there behind him,

1 let's say. I don't -- I don't -- I try not to get  
2 any tickets, especially, lately because they're  
3 expensive, and they're changing the laws as far as  
4 that goes.

02:45:03 5 So it doesn't pay to -- now, if you get a  
6 ticket, you're going to get -- your vehicle is going  
7 to get inspected and you go through this whole thing.  
8 So it's better just don't speed anymore and call it  
9 good.

02:45:15 10 Q I hate the traffic cameras myself.  
11 Going back to the incident, however, the  
12 second officer has his hands up or hand, at least  
13 one, up on top of Mr. Tran for approximately 20  
14 seconds, and then he moves to Mr. Tran's right side?

02:45:31 15 A Yeah.

16 Q How does he position himself in relation to  
17 Mr. Tran? Is he at an angle?

18 A Yeah. He's -- he's at a -- kind of at a  
19 perpendicular angle. So let's say they were in a  
02:45:45 20 straight line here, he's a little bit this way,  
21 probably a 45-degree angle.

22 Q Okay. And you're doing a wonderful job  
23 describing it, and 45 degrees means something; but,  
24 you know, we have to have a plane to look at it.

02:46:04 25 I'm going to draw a wonderfully out-of-scale

1 him pull the gun out or the Taser gun out?

2 A Yeah.

3 Q Okay. Yes?

4 A Yes.

02:50:40 5 Q And that was a black-and-yellow gun I

6 believe you described?

7 A I believe it was. Yes.

8 Q Okay. And when he did that, you had  
9 indicated that he fired it almost immediately?

02:50:54 10 A Yeah.

11 Q Was there any gap or lapse of time?

12 A Very minimal.

13 Q What's that? A few seconds?

14 A No.

02:51:04 15 Q What's "very minimal"?

16 A Maybe a second or two.

17 Q Okay. So he pulled it and fired it within a  
18 second or two?

19 A Yeah.

02:51:11 20 Q Yes?

21 A After he got around -- he got into position.

22 Q Okay. And that's the position --

23 A It took him a second or two probably to get  
24 to that position. Once he got into that position  
02:51:21 25 quickly, it escalated from there.

1 Q Can you tell me what the first officer is  
2 doing while the second officer is handcuffing him?

3 A Just hanging out there, not doing much.

4 Q Okay. And the second officer, that's the  
03:00:31 5 one that Tasered him?

6 A I believe so.

7 Q What did he do with his Taser?

8 A Um, I don't recall.

9 Q Did he re-holster it?

03:00:43 10 A I don't recall.

11 Q Did he lay it on the ground?

12 A I don't recall.

13 Q He didn't hand it to Mr. Tran, did he?

14 A Um --

03:00:53 15 Q Well, I'm trying to eliminate possibilities.

16 A I don't recall what he did with that Taser,  
17 you know. I don't want to assume anything. So I'm  
18 just going to say I'm really not sure.

19 Q Okay. Well, when he was handcuffing  
03:01:04 20 Mr. Tran, he obviously didn't have them in his hands;  
21 correct?

22 A He must have holstered it, I guess.

23 Q Well, when he was handcuffing him, did you  
24 see the Taser in his hand at that time?

03:01:13 25 A No.

1 Q Thank you.

2 Prior to the ambulance or emergency  
3 personnel arriving via ambulance or fire truck, did  
4 you ever see any of the officers, three officers,  
03:27:18 5 leave the grassy area?

6 A You know, other than the third officer I  
7 wasn't sure of, but the other two were pretty much  
8 right there with Andy.

9 Q Okay. When you say "the other two," we're  
03:27:28 10 talking about Officer 1 and Officer 2; correct?

11 A Yes.

12 Q So they were pretty much always there with  
13 Andy?

14 A I think so.

03:27:32 15 Q And then you told us the paramedic rolls up  
16 and Officer 2 has to go to the car to get the key?

17 A Yes.

18 Q Where is that car located? Is that the one  
19 next to your house?

03:27:45 20 A No. I don't think so.

21 Q Well, you saw him go to the car; correct?

22 A I saw him go to the car. And, you know, it  
23 might have been the closest car to the scene.

24 Q Okay. Well --

03:28:03 25 A I don't know -- I don't think he ran all the

1 Q But that wasn't, in your opinion, meant to  
2 harm him or hurt him; correct?

3 A No. I think it was meant to wake him up.

4 Q Okay. So, no, I want to exclude that.

03:36:33 5 So we have him come up. We have him put his  
6 hands on top of Mr. Tran's hand or the other  
7 officers' hands for approximately 20 seconds.

8 I'm trying to figure out why he's cavalier  
9 or cowboy-ish, what he did that made you think that.

03:36:47 10 A Well, he walked around to the side of him  
11 and shot him with a Taser for, in my opinion, no  
12 apparent reason.

13 Everything was under control. Everything  
14 was fine, and then this happened; and I can't help  
03:36:59 15 but understand, you know, when you're in compliance,  
16 why you need to go to that next level.

17 Q And what makes you think Mr. Tran was in  
18 compliance?

19 A Just by what I told you. His hands were on  
03:37:10 20 his head, and I didn't see anything violent  
21 happening, I mean.

22 Q There were subtle movements?

23 A There could be a whole 'nother set of  
24 scenarios going on that I didn't see, but this was  
03:37:23 25 what I saw.

1 Q You didn't see anything overt occurring?

2 A No, nothing overt, nothing criminal, nothing  
3 violent, you know.

4 Q But there were subtle movements going on  
03:37:33 5 between the three individuals; correct?

6 A Yes.

7 Q You saw the body -- the upper bodies moving?  
8 The feet never moved.

9 A The feet, you know, I can't say they never  
03:37:42 10 moved; but they stayed in the same place; but, you  
11 know, the legs move a little. You know, your hands  
12 are moving. You know, your lips are moving. Things  
13 are moving, you know, but not -- you know, I mean,  
14 you know, they're moving. They're alive, and things  
03:37:55 15 are going on, you know.

16 Q Not frozen like statues?

17 A Not frozen like statues, no.

18 Q You just made a statement that makes me want  
19 to pick up with something, and I realize you've said  
03:38:05 20 they stayed in the same general area.

21 A Right.

22 Q And I've always assumed, and that's what  
23 happens when you assume, that the feet placement has  
24 always remained the same.

03:38:12 25 A It's pretty much been the same throughout.

1 They didn't really move off this particular area  
2 right here. And you can see by the sidewalk, it's  
3 easier to measure things, because you have these  
4 lines that are in the sidewalk. You have different  
03:38:28 5 lines, and things like this can be measured, you  
6 know, I mean, to your eye.

7 You know, you use these things when  
8 you're -- you know, when you're doing things. You  
9 use lines as a reference point. And so it was really  
03:38:42 10 to see things that things stayed pretty much right  
11 there, you know.

12 Q But is it possible that during this  
13 encounter, that the officers' feet were moving in  
14 slight directions?

03:38:53 15 A Is it possible? Yeah. I suppose anything  
16 is possible.

17 Q Did you see it happening?

18 A No. I didn't see it happening to a degree  
19 where they were on, you know, one side of the line  
03:39:02 20 and pushing back and forth, anything like that.  
21 Everything pretty much stayed in one area.

22 Q And I appreciate the one area. But, for  
23 example, if you look at me --

24 A Yes.

03:39:10 25 Q -- my -- I'm moving.

1 A Right.

2 Q They never moved over to where the mailbox  
3 is?

4 A Right.

03:41:27 5 Q They never moved over to where the front  
6 door was?

7 A They never moved even halfway over to where  
8 the mailbox was. Everything pretty much specifically  
9 happened in this area.

03:41:33 10 Are you asking me if there was some  
11 movement? Yes.

12 Q That's what I'm asking. So the answer is  
13 "yes"?

14 A Yes.

03:41:39 15 Q Okay. Just no -- you know, they're not  
16 moving by the mailbox, big movements; correct?

17 A Yes, small movement.

18 Q Going back to the attitude, the cowboy  
19 attitude, is it based upon what you just said as far  
03:41:54 20 as, you know, his hands are on top of his head and  
21 then all of a sudden, he goes to the side and Tasers  
22 him? Is that what you based it on?

23 A Um, partly.

24 Q What's the other part?

03:42:07 25 A I don't know. I guess I just -- I have no

1 basis for it, but I guess it's just kind of an  
2 intuition thing. I've dealt with people before,  
3 different types of personalities and, you know,  
4 you -- you know, it was like this just went  
03:42:25 5 overboard, in my opinion, too quickly; and sometimes  
6 people get zealous of their job or what have you, and  
7 that's what I called it.

8 You know, it's not -- it may not be that,  
9 but I called it maybe being a little bit overzealous,  
03:42:42 10 you know, basically just the demeanor and this, that,  
11 and the other thing.

12 I mean, I can't really put a specific, oh,  
13 he did this and this is what I detected. This is  
14 what I determined. No. It's something more subtle  
03:42:58 15 than that, I think.

16 Q Well, you've described the act of going to  
17 the side and Tasing him as being part of it, and  
18 the other part is this gutt feeling you told us  
19 about.

03:43:07 20 A Yes.

21 Q Do you know the names of any of these  
22 officers?

23 A No.

24 Q Have you ever met any of these officers?

03:43:13 25 A No.

1       that you have not told us about?

2           A     As far as?

3           Q     As far as it relates to this incident that  
4       relate to this cowboy-cavalier-type attitude?

03:44:52 5           A     Oh, oh, no, no. There is nothing that I  
6       can -- you know, just like I said, from start to  
7       finish, I mean, you know, the slapping of the face,  
8       you know, the Taser, the this and the that, and you  
9       know, just the whole thing is a package.

03:45:08 10          Q     Well, did you think the slapping -- I think  
11       you indicated a couple times now that you thought the  
12       slapping of the face was an attempt to wake him up.

13          A     But was it really necessary? I don't think  
14       so.

03:45:20 15          Q     Why not?

16          A     Because the guy is dead.

17          Q     Okay. Do you think the officers knew that?

18          A     I don't know what they knew.

19               MR. HENNESSEY: Objection; speculation.

03:45:28 20               THE WITNESS: I don't know that we knew.

21       BY MR. SHERMAN:

22          Q     Okay. So --

23          A     All's I know, there was -- you know, after  
24       things didn't quite go right, there was a lot of  
03:45:36 25       concern here and you know -- and now we've got a

1 A Oh, you know, anything is possible.

2 Q Okay. So it's a possibility?

3 A Sure.

4 Q You don't necessarily think it's a big  
03:52:08 5 possibility, but it's possible?

6 A Yeah. I don't think it's -- I don't think  
7 it actually happened; but, yeah, it's possible. I  
8 mean, I said this from the beginning. I think he was  
9 dead when he -- before he hit the ground.

03:52:22 10 And I'm not basing that on any evidence that  
11 I have. I'm just a witness that saw it, and that's  
12 what I think happened.

13 Q You think the Taser killed him?

14 A I do. You know, things happen chemically in  
03:52:39 15 people's body, and this guy was -- you know, he was  
16 probably on some kind of medication. Who knows?  
17 Everything interacts. You know, you take a -- even  
18 in your regular life, if you take a pill, you have  
19 side effects.

03:52:50 20 And this guy, you know -- you know, when  
21 you're not -- there is an electrical problem in your  
22 body when you're not all there, and there is a  
23 disconnect and it connects, and somehow maybe he got  
24 connected a little bit too much here when this Taser  
03:53:05 25 got him. I don't know.

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CERTIFICATION  
OF  
CERTIFIED SHORTHAND REPORTER

I, the undersigned, a Certified Shorthand  
Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth; that  
any witnesses in the foregoing proceedings, prior to  
testifying, were placed under oath; that a verbatim  
record of the proceedings was made by me using machine  
shorthand which was thereafter transcribed under my  
direction; further, that the foregoing is an accurate  
transcription thereof.

I further certify that I am neither  
financially interested in the action nor a relative or  
employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date  
subscribed my hand and seal at \_\_\_\_\_.



Dated: \_\_\_\_\_

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

QUYEN KIM DANG, et al.	)	
	)	
Plaintiff,	)	
	)	
	)	
vs.	)	Case No. SACV10-0338
	)	
CITY OF GARDEN GROVE, et al.	)	
	)	
Defendants.	)	
	)	
-----	)	

DEPOSITION OF DANIEL KARSCHAMROON

Westminster, California

Tuesday, March 22, 2011

Reported by:

Amber N. Jensen, CSR

Certificate Number 13525

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3

4 QUYEN KIM DANG, et al. )  
5 Plaintiff, )  
6 vs. ) Case No. SACV10-0338  
7 CITY OF GARDEN GROVE, et al. )  
8 Defendants. )  
9 ----- )  
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17 Deposition of DANIEL KARSCHAMROON, taken on  
18 behalf of Plaintiff, at the law offices of  
19 Sean Hennessey, 8231 Westminster Boulevard, Westminster,  
20 California beginning at 9:47 a.m., and ending at  
21 3:48 p.m., on Tuesday, March 22, 2011 before  
22 Amber N. Jensen, Certified Shorthand Reporter,  
23 No. 13525.  
24  
25

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25 ALSO PRESENT:

Courtney Bates, Videographer  
Richard Gendreau

10:07:04 1 anything like that?

2 A No actual courses.

3 Q Anything that dealt with self-defense at all  
4 in any capacity?

10:07:09 5 A Yes. I joined the United States Marine Corps.

6 Q When did you join the Marine Corps?

7 A In 2003.

8 Q Did you join as a reservist at that time?

9 A Yes, I did.

10:07:21 10 Q And what type of training did you receive,  
11 beginning in 2003 at the United States Marine Corps that  
12 may deal with issues of self-defense, hand-to-hand  
13 combat, martial arts?

14 A It was basic boot camp that dealt with  
10:07:40 15 intensity and hands and -- hands-on activity as well as  
16 rifle and dealing with situations.

17 Q Specifically in relation to hand-to-hand --  
18 hands-on contacts, how long was the basic training that  
19 you went through?

10:07:55 20 A Specifically for hand --

21 Q Well, start with the basic training in its  
22 entirety.

23 A Basic training's for six -- correction. It's  
24 three months.

10:08:05 25 Q Okay. About 12 weeks? Is that about right?

10:31:32 1 viewing -- having individuals raise their hands and turn  
2 around and show if they did have any types -- any types  
3 of weapons at a distance at first, for fear of suicide  
4 bombers.

10:31:45 5 Q And also from anybody who may have any type of  
6 weapon; correct?

7 A That's correct.

8 Q So would it be fair to say in your capacity as  
9 in the Marine Corps and in your capacity as a police  
10:31:55 10 officer, you have always been trained to keep people at  
11 a distance, if possible, to determine if they have  
12 weapons?

13 MR. SHERMAN: Objection. It's compound.  
14 Vague and ambiguous.

10:32:04 15 THE WITNESS: Depending on the situation, it's  
16 viewed as much safety as first, and then continuing on.  
17 BY MR. HENNESSEY:

18 Q In your role as a police officer, it's police  
19 officer safety first; correct?

10:32:16 20 A That's correct.

21 Q And that's what you've been trained; correct?

22 A That's correct.

23 Q And you have followed that training throughout  
24 the time you've been a Garden Grove police officer;  
10:32:25 25 fair?

10:32:26 1 MR. SHERMAN: Objection. Vague and ambiguous.  
2 Overbroad. Scope and time. Go ahead.

3 THE WITNESS: That's correct.

4 BY MR. HENNESSEY:

10:32:30 5 Q And as well as in the Marine Corps; correct?

6 MR. SHERMAN: Same objection.

7 THE WITNESS: Yes, I have.

8 BY MR. HENNESSEY:

9 Q And you also tried to teach others under your  
10:32:36 10 command in the Marine Corps to be safe? To conduct  
11 pat-downs in a safe manner? To do in a safe manner;  
12 fair? To protect the Marines; correct?

13 A That's correct. To protect the Marines.

14 Q While in the Marine Corps, did you receive any  
10:32:56 15 training in the use of any type of electronic control  
16 devices?

17 A No.

18 Q Were electronic control devices of any type  
19 a -- used by anybody -- used by yourself or anybody  
10:33:08 20 under your command during any time in the Marine Corps?

21 A Never in the Marine Corps.

22 Q During the time in the Marine Corps, did you  
23 have opportunities to personally detain people yourself?

24 A Yes, I have.

10:33:28 25 Q Personally pat them down?

10:39:31 1 A It would also vary.

2 Q How would -- what would be the longest period

3 of instruction?

4 A For continuous instruction?

10:39:40 5 Q Yes. Of the --

6 A Probably --

7 Q I'm sorry, go ahead.

8 A Probably for one day.

9 Q And what would be the shortest length? The

10:39:47 10 two hours?

11 A Yes.

12 Q And during those 20 to 30 sessions, did you

13 provide instruction in pain compliance techniques?

14 A Yes, I did.

10:39:55 15 Q In wrist control situations?

16 A Yes, I did.

17 Q In how to detain suspects?

18 A No.

19 Q How to handcuff suspects?

10:40:02 20 A No.

21 Q How to take suspects down to the ground?

22 A Yes.

23 Q What did -- specifically did you train as to

24 how to take suspects down to the ground?

10:40:11 25 A It was arm bar take-downs, hip throws,

10:44:16 1 Q Web belt. Okay. And how long were you in  
2 that role?

3 A That's during the six-month -- or the  
4 three-month course of basic boot camp.

10:44:23 5 Q Okay. So that would have been back in 2003?

6 A Yes.

7 Q So if you're a tan belt for three and a half  
8 years, that puts you into 2006. Somewhere around 2007.  
9 Do you remember approximately when it was that you  
10 became a brown belt?

10:44:37 11 A It was when I was in Africa.

12 Q Are there any type of continuous proficiency  
13 testing in relation to keeping your brown belt?

14 A No, but there is for an instructor status.

10:44:56 15 Q How many continuing proficiency tests have you  
16 taken since, um, 2006 in order to be a brown belt  
17 instructor?

18 A I have not taken any.

19 Q Have you become a brown belt instructor?

10:45:09 20 A At that time, I was.

21 Q In Africa?

22 A Yes.

23 Q At some point, did you -- were you no longer  
24 considered a brown belt instructor?

10:45:16 25 A Yes.

10:46:19 1 Q '10. Okay. Do you remember that you ended  
2 that -- in June of 2010 -- so from June of 2010 until  
3 when did you instruct in the Marine Corps as a brown  
4 belt? Did that -- did I get that wrong?

10:46:34 5 A No, that's right. During -- when we came back  
6 from our deployment, we have a period where we're trying  
7 to adjust back to regular -- regular life, per se.

8 Q All right.

9 A And in that time, we did some martial arts  
10:46:49 10 training, and I assisted with that training.

11 Q Do you remember the last time since June of  
12 2010 you instructed in any -- any Marine in any martial  
13 arts?

14 A It was that period between June of 2010 and  
10:47:01 15 September of 2010.

16 Q Okay. So at -- in September 3rd of 2008, you  
17 would have been a -- a green belt instructor? Does that  
18 sound right?

19 A A brown belt instructor.

10:47:24 20 Q In September 3rd of 2008, you would have been  
21 considered a brown belt instructor?

22 A Either a brown belt instructor or brown belt.

23 Q So on the date of this incident involving  
24 Andy Tran -- on the date of that incident, you would  
10:47:39 25 either be considered a brown belt or a brown belt

10:50:32 1 A I want to say November 17th of 2007. I can't  
2 be sure on that date.

3 Q That's okay. And what happened upon  
4 graduation? What I mean by that is, were you assigned  
10:50:43 5 to any particular law enforcement agency during that  
6 time?

7 A Yes, I was.

8 Q You heard Officer Gendreau talk about the  
9 hands-on training he received while at  
10:50:54 10 Goldenwest Academy. Is the hands-on training that you  
11 received different in any manner than what he described  
12 yesterday, if you remember how he described it?

13 A I --

14 MR. SHERMAN: Let me object to the question as  
10:51:07 15 it assumes facts not in evidence. Lacks foundation.  
16 Calls for speculation.

17 MR. HENNESSEY: I'll withdraw it.

18 BY MR. HENNESSEY:

19 Q What hands-on training did you receive at the  
10:51:13 20 Goldenwest Academy yourself from June, 2007 until  
21 November, 2007, approximately?

22 A From the Academy?

23 Q Yes.

24 A It was approximately 40 to 80 hours of ACT  
10:51:26 25 training.

11:14:24 1 instructors specifically with compliance?

2 A I cannot recall.

3 Q Can you give any estimation?

4 A No, I can't.

11:14:30 5 Q Can you give any estimation as to whether  
6 you're talking about one hour, one day, one week?

7 A It would range from either one hour to three  
8 days, four days.

9 Q Do you recall the names of the instructors who  
11:14:41 10 gave those lectures?

11 A No, I don't.

12 Q Do you recall any of the substance of those  
13 lectures?

14 MR. SHERMAN: Objection. Asked and answered.

11:14:48 15 Go ahead.

16 THE WITNESS: It was referring to the  
17 Bill of Rights, Constitution, and the amendments.

18 BY MR. HENNESSEY:

19 Q I'm talking specifically about the  
11:14:55 20 Fourth Amendment.

21 A During that instruction?

22 Q During your time at Goldenwest Academy.

23 A Yes.

24 Q What specifically do you remember being taught  
11:15:03 25 to you about compliance with the Fourth -- well, what do

11:15:07 1       you understand the Fourth Amendment to be?

2           A     It is unreasonable search and seizure.

3           Q     And did you receive instruction as to how to  
4       avoid committing unreasonable searches and seizures?

11:15:19 5           A     During the Academy?

6           Q     Yes.

7           A     I cannot recall.

8           Q     Do you recall ever -- any instructor at any  
9       time ever saying anything about attempting to avoid  
11:15:25 10      unreasonable searches and seizures during your time at  
11      the Goldenwest Academy?

12          A     Yes.

13          Q     What do you specifically recall any person  
14      saying about that issue?

11:15:35 15          A     I cannot recall specific sayings. I just  
16      remember it as learning terminal during the -- during  
17      the policy academy.

18          Q     Okay. So you were involved in one, possibly  
19      two lectures, but you -- what you remember most about  
11:15:50 20      the teaching related to the Fourth Amendment at  
21      Goldenwest Academy came from these booklets?

22                  Is that fair?

23          A     No. It -- it wasn't one or two lectures. It  
24      was one or two instructors teaching during the time  
11:16:04 25      frame of either one hour to three -- three days, based

11:16:08 1 on learning terminal that was based on the Constitution,  
2 Bill of Rights, and the Amendments.

3 Q So were the instructors going -- like, did you  
4 have a booklet that you were looking at and they were  
11:16:18 5 going over the booklets with you?

6 A That's correct.

7 Q And do you specific -- do you still have those  
8 booklets?

9 A No, I don't.

11:16:26 10 Q Do you know whether the curriculum at  
11 Goldenwest College has changed since the time you left?

12 A I'm unaware of it.

13 Q Do you remember approximately the length of  
14 these booklets that were being used for instruction on  
11:16:42 15 compliance with the fourth Amendment specifically?

16 MR. SHERMAN: You mean how -- page?

17 MR. HENNESSEY: Yeah. Pages.

18 MR. SHERMAN: Okay. It was vague. Go ahead.

19 THE WITNESS: Probably from 1 to 100 pages.

11:16:54 20 BY MR. HENNESSEY:

21 Q At any point in time, did you sit down there  
22 and read continuously each of the pages?

23 A Yes.

24 Q Did you -- did you seem to understand what was  
11:17:06 25 in those pages?

11:17:08 1 MR. SHERMAN: Objection. Vague. Go ahead.

2 THE WITNESS: At that time, yes.

3 BY MR. HENNESSEY:

4 Q Did you receive live instruction on different  
11:17:16 5 types of contacts with citizens that may rise to the  
6 level of an unreasonable search and seizure?

7 MR. SHERMAN: Objection. Vague.

8 BY MR. HENNESSEY:

9 Q If -- do you understand what I'm talking  
11:17:26 10 about?

11 A No. At that time, did I receive --

12 Q At Goldenwest Academy, did you receive any  
13 live instruction where a police officer has demonstrated  
14 different types of maneuvers, such as choke holds, such  
11:17:38 15 as deployment of various devices that may be  
16 unreasonable under the circumstances?

17 Did they explain to you, "Don't do this"? Did  
18 they do things like that?

19 A Yes.

11:17:48 20 Q Okay. What do you remember -- do you remember  
21 them ever saying anything in relation to the deployment  
22 of an electronic control device in violation of some --  
23 of -- let me start that again.

24 Do you remember any instruction while at  
11:18:01 25 Goldenwest Academy about the deployment of an electronic

11:28:44 1 A He had a blank stare on his face and he  
2 looked -- had a puzzled look on his face.

3 Q When do you mean by a "blank stare"?

4 A He was staring off into space, but in my  
11:28:56 5 direction.

6 Q Okay. What do you mean by a "puzzled look" on  
7 his face?

8 A There was a slight sense of confusion on his  
9 face.

11:29:05 10 Q What about anything about his appearance led  
11 you to believe that he had a sense of confusion going  
12 on? What about --

13 MR. SHERMAN: On his face?

14 BY MR. HENNESSEY:

11:29:14 15 Q What about your personal observations of his  
16 face led you to believe that he may have been in a sense  
17 of confusion? A state of confusion?

18 A That he had a blank stare.

19 Q So the blank stare in and of itself led you to  
11:29:26 20 believe that he may be confused or puzzled? Was it the  
21 stare itself or anything else?

22 A Yes, it was the stare.

23 Q Have you seen anybody else prior to  
24 September 3rd, 2008 exhibit that type of stare before  
11:29:36 25 that you saw on Andy Tran's face on September 3rd, 2008?

11:32:01 1 officers?

2 A I was not asked. It was more of -- they were  
3 supervising.

4 Q Did they sometimes critique the style you may  
11:32:10 5 have used, or give suggestions as to how things could be  
6 done differently?

7 A Yes.

8 Q Was that a continuous training that you  
9 received over the three months of this observation  
11:32:19 10 followed by critique, or explanations as to how things  
11 could be done differently?

12 A Yes.

13 Q Okay. Were you also trained from all three of  
14 these officers, um, of the use of excessive force? What  
11:32:32 15 constitutes excessive force?

16 A Yes.

17 Q Did you receive training in the -- what  
18 constitutes excessive force -- constitutes excessive  
19 force at Goldenwest Academy?

11:32:41 20 A I believe so.

21 Q Do you remember what specifically you were  
22 trained at the Goldenwest Academy as to what constituted  
23 excessive force, or what the standard was?

24 A I -- I cannot recall specifically.

11:32:51 25 MR. SHERMAN: That's compound. But go ahead.

11:35:41 1 THE WITNESS: No.

2 BY MR. HENNESSEY:

3 Q In relation to the scenarios that you were  
4 trained on in relation to dealing with mental health  
11:35:47 5 issues, the various block -- the various block  
6 instruction that's you were trained, were you shown  
7 actual examples of how to speak with somebody who may be  
8 suffering from a mental illness?

9 MR. SHERMAN: I think it's compound. Go  
11:36:01 10 ahead.

11 BY MR. HENNESSEY:

12 Q If you understand it.

13 A I -- there wasn't an example for it.

14 Q When you say there was or was not examples?

11:36:10 15 A Was not. It was based on scenarios and  
16 critique after the scenarios.

17 Q Can you give examples of specifically relating  
18 to contacts with people who may suffer from mental  
19 illness, what types of scenarios were taught and what  
11:36:23 20 types of critiques were given?

21 A I cannot recall specific examples.

22 Q Can you recall any one particular example of  
23 any type of training that you received at  
24 Goldenwest College as it relates to scenarios involving  
11:36:34 25 people with mental illnesses?

11:36:36 1 A Not that I can recall.

2 Q From the time that you became a  
3 Garden Grove Police Department officer in November of  
4 2007 until September 3rd of 2008, do you remember  
11:36:46 5 receiving any further instruction on techniques with --  
6 for dealing with people who may suffer from mental  
7 illness?

8 A Not that I can recall.

9 Q Have you heard of the Americans with  
11:36:56 10 Disabilities Act?

11 A Yes, I have.

12 Q Where have you heard of that?

13 A I cannot recall.

14 Q Do you recall hearing that term at the  
11:37:02 15 Goldenwest College?

16 A Possibly.

17 Q Do you recall hearing that term as a police  
18 officer at the Garden Grove Police Department between  
19 November, 2007 and September 3rd of 2008?

11:37:14 20 A Possibly.

21 Q Have you ever been -- received any training as  
22 to complying with the Americans with Disabilities Act?

23 MR. SHERMAN: Objection. Vague and ambiguous.  
24 Overbroad. You may answer.

11:37:24 25 THE WITNESS: I cannot recall.

11:39:17 1 A Dealing with individuals with mentally  
2 disabled needs some calm, patience, and just overviewing  
3 the situation ahead.

4 Q How about calling for potential medical help?

11:39:28 5 A Yes.

6 MR. SHERMAN: Objection. Vague.

7 BY MR. HENNESSEY:

8 Q How about 5150s? Have you heard of that term  
9 before September 3rd of 2008?

11:39:37 10 A Yes, I have.

11 Q What did you understand the term to mean prior  
12 to September 3rd of 2008?

13 A As an individual that's gravely disabled or a  
14 grave danger to himself or to herself or to others.

11:39:49 15 Q And that's a definition that you knew prior to  
16 September 3rd of 2008; fair?

17 A That's correct.

18 Q Because you learned that both at  
19 Goldenwest Academy and during your training at the  
11:39:59 20 Garden Grove Police Department; fair?

21 A Yes.

22 Q And did you also learn -- do you know what  
23 Health and Safety Code section 11550 is?

24 A Yes.

11:40:07 25 Q Did you know what that was prior to

11:46:10 1 this person is suffering from a mental illness as  
2 opposed to something induced by drugs or alcohol; fair?

3 A Yes.

4 Q Okay. And I'm assuming you've also seen  
11:46:20 5 people you believe were suffering from the effects of  
6 controlled substances or alcohol as opposed to mental  
7 illness; is that fair?

8 A Yes.

9 Q In your training as a police officer, have you  
11:46:37 10 been trained to use the least amount -- the least amount  
11 of force under any given situation possible?

12 MR. SHERMAN: Objection. Vague. Ambiguous.  
13 Go ahead.

14 THE WITNESS: I've been trained on using the  
11:46:49 15 reasonable -- reasonable amount of force.

16 BY MR. HENNESSEY:

17 Q As part of your training, have you been  
18 trained to use the least amount of force necessary under  
19 the circumstances? Does that sound familiar? Does that  
11:46:57 20 terminology sound familiar?

21 A Yes.

22 Q Where do you remember hearing that terminology  
23 before?

24 A I cannot recall.

11:47:02 25 Q Do you remember hearing that at the

12:30:50 1 on the X26?

2 A Yes.

3 Q Do you recall your attendance with any  
4 particular instructors during that time frame?

12:30:58 5 A Yes.

6 Q Who do you remember giving any type of  
7 presentations at that time? During that time?

8 A It was Sergeant Lux.

9 Q L-U-X?

12:31:07 10 A Yes.

11 Q Do you recall attending any other types of  
12 training with any other officers at the  
13 Garden Grove Police Department between September -- I'm  
14 sorry. November of '07 and September of '08 relating to  
15 the X26?

16 A Yes. It was informal training during,  
17 briefing.

18 Q So just whatever sergeant may have been giving  
19 a briefing that day, issues on the X26 may have come up?

12:31:30 20 A Yes.

21 Q Do you remember any specific issues that may  
22 have come up during those briefings prior to  
23 September 3rd of 2008?

24 MR. SHERMAN: I believe it's been asked and  
12:31:39 25 answered. Go ahead.

12:36:19 1 Q Do you have any idea as to the year?

2 A No, I don't.

3 Q Prior to September 3rd, 2008, how many times  
4 have you patrolled with Officer Gendreau? What I mean  
12:36:30 5 by that is, how many times have you been working the  
6 same shift and potentially responded to the same calls?

7 A This would have been the only day.

8 Q Would it be fair to say that prior to  
9 September 3rd, 2008, you had never worked with  
12:36:44 10 Officer Gendreau before in a capacity as a police  
11 officer?

12 MR. SHERMAN: Objection. Vague. Misstates --  
13 you mean on the same shift? Because they're both police  
14 officers with Garden Grove.

12:36:51 15 BY MR. HENNESSEY:

16 Q Have you ever responded to a scene with  
17 Officer Gendreau together prior to September 3rd, 2008,  
18 if you recall?

19 A I can't recall.

12:37:01 20 Q Do you recall working the same shifts that  
21 Officer Gendreau was working prior to September 3rd of  
22 2008?

23 A I don't recall working any same shifts.

24 Q Do you recall being present at the scene of  
12:37:13 25 any dispatch calls with Officer Gendreau prior to

12:38:10 1 A Not that I can recall.

2 Q Do you -- have you -- have you worked -- have  
3 you responded to scenes of dispatch calls where you have  
4 seen Officer Gendreau since September 3rd, 2008?

12:38:21 5 A Not that I can recall.

6 Q Is that out of choice? Have you made a  
7 request not to be assigned on calls with  
8 Officer Gendreau?

9 A No, that is not a request.

12:38:32 10 Q Can you make such a request?

11 MR. SHERMAN: Objection. Foundation. Go  
12 ahead.

13 THE WITNESS: Just when we're dispatched.

14 BY MR. HENNESSEY:

12:38:41 15 Q Are you able to go to a commanding officer and  
16 say, "I no longer want to respond to dispatch calls with  
17 this particular officer"?

18 A That is -- that is a possibility.

19 Q Has that ever -- have you ever exercised that  
12:38:52 20 possibility in relation to Officer Gendreau?

21 A No, I haven't.

22 Q Do you recall any work with Officer Gendreau  
23 in law -- in a role as a law enforcement officer prior  
24 to September 3rd of 2008? And what I mean by that,  
12:39:08 25 attendance at sergeant briefings, in the field --

12:39:12 1 anything?

2 MR. SHERMAN: Objection. Vague. Ambiguous.  
3 Overbroad. Possibly asked and answered. Are you asking  
4 him does he recall any contacts, in general, out in the  
12:39:22 5 field?

6 MR. HENNESSEY: In the station, out in the  
7 field -- anything.

8 MR. SHERMAN: Objection. Even in the station.

9 MR. HENNESSEY: Prior to September 3rd of  
12:39:27 10 2008.

11 BY MR. HENNESSEY:

12 Q Do you recall that?

13 A I don't recall specific meetings.

14 Q Do you recall being at the same meetings that  
12:39:34 15 he was present at? I mean, do you recall seeing him  
16 there? Maybe not communicated, but seeing him?

17 MR. SHERMAN: Objection. Relevance.  
18 Immateriality. Go ahead.

19 BY MR. HENNESSEY:

12:39:46 20 Q Did you have any communication with him on the  
21 day, September 3rd, 2008, prior to the time you  
22 responded to Andy Tran's house?

23 A I don't believe so.

24 Q You just recall seeing him at the sergeant's  
12:39:56 25 briefing?

12:54:59 1 policies relating to the IVS unit, if you recall?

2 A Possibly in between an hour to five hours.

3 Q Do you recall it being at one time or at  
4 different times over the course of the two-week --

12:55:13 5 A It was just during one time.

6 Q Okay. Do you recall receiving any  
7 supplemental training on the policies at  
8 Garden Grove Police Department relating to the IVS units  
9 after the two-week training that you've talked about?

12:55:28 10 A I don't recall.

11 Q Do you -- do you recall the subject coming up  
12 during any of the sergeant briefings prior to shifts?

13 A Possibly.

14 Q Do you recall seeing any written material

12:55:39 15 prior to September 3rd, 2008 on the

16 Garden Grove Police Department policies relating to the  
17 use of IVS units?

18 A I don't recall.

19 Q Now, the IVS unit -- is it fair to say that

12:55:49 20 the IVS unit, uh, has two cameras on it? One of which  
21 faces out from your patrol unit and another camera that  
22 points towards the backseat of your patrol unit?

23 A That's fair to say.

24 Q Is the IVS unit a fixed unit or is it

12:56:08 25 adjustable, if you understand what I'm talking about, as

13:12:05 1 off during -- or based on situations.

2 BY MR. HENNESSEY:

3 Q What type of training did you receive as to  
4 the types of dispatch calls received that would warrant  
13:12:13 5 turning on the IVS system?

6 A I can't recall of any specific examples on  
7 which calls.

8 Q So you weren't trained on -- you can't recall,  
9 as you sit here today, being trained on any particular  
13:12:26 10 type of call that the IVS unit should be activated for;  
11 is that fair?

12 MR. SHERMAN: Other than the two he's already  
13 talked about? I don't know if that was training either.

14 BY MR. HENNESSEY:

13:12:37 15 Q Well, have you described any particular types  
16 of calls that you were trained should be recorded?  
17 Let's say you receive a call for a burglary, you receive  
18 a call for, you know, a sexual assault. You receive a  
19 call for -- I mean, are there any calls in particular  
13:12:56 20 based upon their very nature that you've been trained,  
21 those calls, you turn the IVS unit on?

22 A Not that I can recall.

23 Q How about the -- the -- have you ever been  
24 trained as to the nature of the call itself? You know,  
13:13:13 25 person armed with a gun, person mentally ill, person

13:13:17 1       apparently on drugs, person suicidal? Has there been  
2       any calls like that where you've been trained that you  
3       should activate the IVS unit?

4           A     Not that I can recall either.

13:13:29 5           Q     So is it your understanding that the  
6       activation of the IVS unit is completely discretionary  
7       to you?

8           A     Yes.

9           Q     Okay. Have you, prior to September 3rd, 2008,  
13:13:40 10      had occasions where you felt it necessary to record  
11      contacts with citizens?

12          A     I --

13                   MR. SHERMAN: Objection. Relevancy and  
14      immateriality. Go ahead.

13:13:48 15                   THE WITNESS: I can't recall.

16      BY MR. HENNESSEY:

17          Q     Can you recall, as you sit here today, between  
18      the dates of November, 2007 and September 3rd, 2008, of  
19      ever activating your IVS system in response to a call?

13:14:00 20          A     I can't recall.

21          Q     You heard Officer Gendreau talk about training  
22      that he received about activating the IVS unit based  
23      upon the potential dangerousness of the situation.

24                   Do you recall that testimony?

13:14:20 25                   MR. SHERMAN: Objection. Foundation.

13:14:21 1 Speculation. Assumes facts not in evidence. Go ahead.

2 BY MR. HENNESSEY:

3 Q Do you recall that testimony by

4 Officer Gendreau yesterday?

13:14:27 5 MR. SHERMAN: May misstate. Go ahead.

6 THE WITNESS: Yes, I do.

7 MR. HENNESSEY: Is that -- is what he

8 described, the training that he received in relation to

9 activating the IVS unit, similar to the training that

13:14:39 10 you remember receiving?

11 MR. SHERMAN: Speculation. Foundation.

12 THE WITNESS: The training I received was just

13 on how to activate. It wasn't specified on which calls

14 to activate the IVS system.

13:14:54 15 BY MR. HENNESSEY:

16 Q So would it be fair to say yesterday, when

17 Officer Gendreau was -- was talking about particular

18 types of calls -- high priority, low priority,

19 et cetera -- particular types of calls that he was

13:15:07 20 trained to activate the IVS unit, you don't remember

21 receiving similar training?

22 A I can't recall.

23 Q Okay. On September 3rd, 2008, do you recall

24 where you were when you were dispatched to Andy Tran's

13:15:26 25 house?

13:22:00 1 time I was on scene, it -- it was longer than two  
2 seconds from when I went on scene and Officer Gendreau  
3 went on scene.

4 Q So your independent recollection of the events  
13:22:08 5 was that you were there for more than two seconds on  
6 site before you saw Officer Gendreau arrive?

7 A That's correct.

8 Q Okay. Do you know approximately how long you  
9 had been -- how long -- do you know approximately what  
13:22:21 10 time -- how much -- let me start all over.

11 Do you have any idea how much time passed from  
12 the time that you parked your car until the time that  
13 you first saw Officer Gendreau?

14 A From the time I first parked my car to the  
13:22:39 15 time I first saw Officer Gendreau --

16 Q Yes.

17 A -- would roughly be between 20 and 45  
18 seconds.

19 Q Okay. And just so I'm clear, do you believe  
13:22:52 20 that you were on scene for approximately 20 to 45  
21 seconds doing whatever, meaning your car was parked  
22 there for 20 to 45 seconds before the first time you  
23 laid eyes on Officer Gendreau?

24 A That's correct.

13:23:05 25 Q Could it have been longer? Could you have

13:38:47 1 Q Okay. And how -- in what capacity did you see  
2 these types of dispatch records, prior to this case? Or  
3 prior to September 3rd of 2008?

4 A It would be in reports from other cases.

13:39:03 5 Q Okay. So you've looked at those and seen  
6 those in other cases that you may have been involved in  
7 ongoing investigations or testimony or things like that;  
8 is that fair?

9 A That's correct.

13:39:17 10 Q Now, you understood that you were responding,  
11 um, to this location as a result of a 51 -- 5150 call?

12 A Yes.

13 Q When you're responding to a 5150 call, you  
14 know you're responding to a 5150 call. Are there -- are  
13:39:39 15 you trained to take any -- are you trained to do  
16 anything differently than, say, a call for a petty  
17 theft?

18 MR. SHERMAN: Objection. Vague. Go ahead.

19 BY MR. HENNESSEY:

13:39:51 20 Q If you understand it? I mean, are there any  
21 particular policies that you're taught to implement  
22 specifically relating to receiving a 5150 call?

23 MR. SHERMAN: Same objection. Go ahead.

24 THE WITNESS: Relating to a 5150 call, as in  
13:40:07 25 personnel I'm supposed to have there, just for

13:58:38 1 answer.

2 THE WITNESS: I don't recall asking for any  
3 other information.

4 MR. SHERMAN: But is it possible?

13:58:45 5 THE WITNESS: It is possible.

6 MR. HENNESSEY: Okay.

7 MR. SHERMAN: I'm sorry? Yeah. You just got  
8 to answer his question.

9 THE WITNESS: Okay.

13:58:51 10 BY MR. HENNESSEY:

11 Q Now, in relation to responding to a 5150 call,  
12 have you received any particularized training as to how  
13 to potentially handle that call versus a petty theft or  
14 other call?

13:59:12 15 MR. SHERMAN: I think it's been asked and  
16 answered, but go ahead.

17 THE WITNESS: I don't recall any  
18 particularized or specific training other than  
19 on-the-job experience.

13:59:23 20 BY MR. HENNESSEY:

21 Q Okay. In relation to -- did you write any  
22 police reports about the 9-3-08 incident involving you  
23 and Andy Tran?

24 A I did not write any physical reports.

13:59:33 25 Q Okay. When you say you did not write any

14:11:26 1 force?

2 MR. SHERMAN: Objection. Relevancy.

3 Immateriality. Go ahead.

4 THE WITNESS: Yes, I do.

14:11:31 5 BY MR. HENNESSEY:

6 Q Prior to September 3rd, 2008, what was your  
7 understanding as to the concept of continuum of force?

8 MR. SHERMAN: Same objection.

9 THE WITNESS: The force that is needed to --

14:11:41 10 that is escalated or needed to subdue a subject that is  
11 being combatant and passive resistant, or actively  
12 resistant.

13 BY MR. HENNESSEY:

14 Q Okay. When you arrived on scene and -- on

14:11:57 15 9-3-08, did you -- did you attempt to activate your IVS  
16 system when you arrived -- when you parked your car?

17 A No, I didn't.

18 Q Why not?

19 MR. SHERMAN: Objection. Argumentative.

14:12:08 20 Relevancy. Immateriality. Go ahead.

21 THE WITNESS: I didn't think about it.

22 MR. HENNESSEY: It never entered your mind?

23 MR. SHERMAN: Objection. Argumentative. Go  
24 ahead.

14:12:17 25 THE WITNESS: No, it didn't.

14:12:19 1 BY MR. HENNESSEY:

2 Q Okay. So when you say you didn't think about  
3 it, it never entered your mind to potentially videotape  
4 a encounter with someone you knew who potentially had  
14:12:25 5 mental health issues to protect yourself?

6 MR. SHERMAN: Argumentative. Go ahead.

7 THE WITNESS: I did not know he had mental  
8 health issues, and I did not -- I did not think about.

9 BY MR. HENNESSEY:

14:12:39 10 Q On dispatch, you indicated you were responding  
11 to a 5150 call; correct?

12 A That's correct.

13 Q Does that, to you, mean that you're responding  
14 to somebody who may have mental health issues?

14:12:48 15 A That is correct. May have mental health  
16 issues.

17 Q Okay. So when you arrived on scene, you knew  
18 that you may be encountering somebody with mental health  
19 issues?

14:12:59 20 A Yes, it was a possibility.

21 Q And you knew that going in?

22 A Yes, it was a possibility.

23 Q And you, however, did not feel the need to  
24 turn on your video camera to protect yourself against  
14:13:09 25 allegations that may come from some mentally ill person?

14:14:01 1 pants? Pockets? Without pockets? Anything specific  
2 about the pants?

3 A I don't recall.

4 Q Shoes or not shoes?

14:14:07 5 A I don't recall.

6 Q Is the manner in which somebody dressed  
7 something that you consider when -- when determining how  
8 best to approach a suspect?

9 MR. SHERMAN: Vague. Go ahead.

14:14:23 10 THE WITNESS: Just for clarification, just by  
11 the way he is dressed determines my manner on approach?  
12 BY MR. HENNESSEY:

13 Q Yes. For instance, if you walk up to somebody  
14 who appears to be wearing just a bathing suit and no  
15 shirt as opposed to somebody who may be wearing baggy  
16 clothing and sweatshirts, you would -- I'm assuming  
17 you'd look at that person differently as to their  
18 ability to hide weapons on them; is that fair?

14:14:34 19 MR. SHERMAN: Objection. Hang on. Compound.  
20 Vague and ambiguous. Incomplete hypothetical. Go  
21 ahead.

22 THE WITNESS: That's fair.

23 BY MR. HENNESSEY:

24 Q Okay. And have you been trained at the  
14:14:55 25 Garden Grove Police Department to remain at a distance

14:14:59 1 from somebody, if able, to determine whether they have  
2 weapons before going hands-on with them?

3 A That's correct.

4 Q Okay. That is part of your training?

14:15:10 5 A That is part of the on-the-job training and  
6 experience.

7 Q And that is something that you utilized during  
8 your contact with Mr. Tran on 9-3-08?

9 A That's correct.

14:15:19 10 Q To keep him at a distance prior to going  
11 hands-on with him to determine whether he did or did not  
12 have weapons?

13 A That's correct.

14 Q When Mr. -- when you arrived on scene, what  
14:15:32 15 was Mr. Tran doing?

16 A When I parked my vehicle on the west side of  
17 Bar -- Barnett? One second. Was it Barnett Street?

18 Q Just for -- if you need to look at any  
19 documents to refresh your recollection as to the  
14:15:44 20 location of the event, feel free to do so. But just if  
21 you could indicate that you are looking at a document to  
22 refresh your recollection.

23 A Okay. I need to look at this document just  
24 to --

14:15:55 25 Q Sure. Looking at document Exhibit B, does

14:15:57 1 that help refresh your recollection as to the location  
2 of the incident?

3 A Yes, it does, as 12352 Barnett.

4 I parked on the west side of Barnett Street on  
14:16:08 5 Paloma, on the south curb line of Paloma. And as I  
6 parked my vehicle, I can see the subject partially  
7 inside a window with the screen window away -- or off  
8 the window and on the ground.

9 Q Did you position your car so that it was  
14:16:25 10 facing -- so it was facing directly at  
11 13252 Barnett Way, if you remember?

12 MR. SHERMAN: Objection. Vague. Go ahead.

13 THE WITNESS: Yes.

14 BY MR. HENNESSEY:

14:16:33 15 Q Okay. Would it have been in a position, had  
16 you chosen to activate your IVS unit, that it would have  
17 been in a position to videotape your encounter with  
18 Mr. Tran?

19 MR. SHERMAN: Objection. Speculation.

14:16:45 20 Relevancy. Immateriality. Go ahead.

21 THE WITNESS: Yes, it is in a position that  
22 can see the incident.

23 BY MR. HENNESSEY:

24 Q Meaning from your training -- I'm sorry.

14:16:56 25 From your experience with that IVS unit, from

14:33:50 1 vehicle within my beat.

2 BY MR. HENNESSEY:

3 Q Okay. So within -- if possible, you try to  
4 use the same unit, but there's no policy saying that you  
14:33:58 5 have to; is that fair?

6 MR. SHERMAN: Objection. Misstates his  
7 testimony. Go ahead.

8 THE WITNESS: Yes, that's correct.

9 BY MR. HENNESSEY:

14:34:03 10 Q Um, in relation to when you arrived and saw,  
11 um, Mr. Tran, you indicated that he was on the porch of  
12 his house; is that fair? Or a porch of some house?

13 A He was on the porch and partially inside a  
14 window.

14:34:21 15 Q When you say that he was partially inside a  
16 window, can you describe the observations that you made?

17 A His head was inside the window, and I would  
18 assume part of his body. His upper torso.

19 Q When you say you would assume part of his  
14:34:37 20 upper body, is that based upon something that you could  
21 actually see with your own eyes or -- or something else?

22 A Just depending on the angle and what I saw.

23 Q Um, in relation to the priority of calls, what  
24 type of priority would this call have been?

14:34:53 25 MR. SHERMAN: Object.

14:38:06 1 are expected to interact with people who may have mental  
2 problems; correct?

3 MR. SHERMAN: Objection. Vague. I think it's  
4 been asked and answered. Go ahead.

14:38:16 5 THE WITNESS: That's correct.

6 BY MR. HENNESSEY:

7 Q And that's something that you've been  
8 specifically -- you've specifically received some  
9 training in relation to dealing with potential mentally  
10 ill suspects, or civilians; correct?

14:38:28 11 MR. SHERMAN: I believe that's been asked and  
12 answered as well. Go ahead.

13 THE WITNESS: That's correct.

14 BY MR. HENNESSEY:

14:38:42 15 Q Did you see -- at any time prior to the  
16 Tasing event, did you see any other people exit  
17 13252 Barnett Way at any time?

18 A Prior?

19 Q Prior to the Tasing event?

14:39:00 20 A I cannot recall.

21 Q So you don't recall one way or another whether  
22 you saw any two older people, maybe in their 60s, and a  
23 four-year-old child? Do you recall ever seeing anybody  
24 matching that description prior to the Tasing event?

14:39:15 25 A I cannot recall if they exited the house. I

14:43:28 1 assess what's going on?

2 A That's correct.

3 Q That you've been trained that if you have a  
4 significant fear that somebody may be armed, that you

14:43:35 5 should not approach that person; is that fair?

6 MR. SHERMAN: Objection. Asked and answered.  
7 Go ahead.

8 THE WITNESS: That's correct.

9 BY MR. HENNESSEY:

14:43:41 10 Q And you employed that training when you  
11 approached Mr. Tran on 9-3-08?

12 A That's correct.

13 Q When you stopped, what, if anything, did you  
14 do?

14:43:53 15 A I attempted to call Andy from the porch. He  
16 replied by standing up slowly and turning towards me,  
17 and at that time, he seemed like he was complying.

18 And I was assessing the situation that he  
19 didn't have any weapons in his hand at that time, and I  
14:44:14 20 called him towards me to see if he would comply, and he  
21 started walking down the steps and towards me.

22 And I told him to stop when he was  
23 approximately 10 to 15 feet away from me, and I told him  
24 to put his hands in the air and behind his head. At  
14:44:29 25 that time, he still complied.

14:44:31 1 And I told him to turn around, and he slowly  
2 turned around, and that's when I approached him and  
3 grabbed with both hands his -- his hands and told him to  
4 interlock his fingers, because he didn't interlock his  
14:44:48 5 fingers.

6 And once he did that, I then grabbed with my  
7 left hand the interlocked portion of his fingers and was  
8 reaching with my right hand to get my handcuffs.

9 MR. SHERMAN: Seems like a wonderful  
14:45:02 10 narrative.

11 MR. HENNESSEY: I'm going to break it down  
12 piece-by-piece.

13 MR. SHERMAN: Gosh, I knew you would.

14 BY MR. HENNESSEY:

14:45:08 15 Q When you indicated that you called Andy, did  
16 you know his name at the time, or did you suspect his  
17 name at the time that you were approaching the house?

18 A I suspected.

19 Q Where did you -- where did you receive the  
14:45:20 20 information that led you to believe that the person on  
21 the porch may be named Andy?

22 A It might have been broadcasted from dispatch,  
23 or it might have been the individual yelling, "Hey, hey,  
24 hey." He might have mentioned the name Andy, and that's  
14:45:34 25 where I might have gotten it.

14:45:36 1 Q Do you know for certain, as you sit here  
2 today, whether you actually used the term "Andy" when  
3 addressing the individual on the porch?

4 A Yes, I -- I am for sure I used the name Andy.

14:45:49 5 Q Okay. And as I understand it, when -- did  
6 Mr. Tran -- from the time that you walked out of your  
7 car until the time that you got to the point where you  
8 say that you stopped, did Mr. Tran do anything other  
9 than what you described? Meaning, be partially inside  
10 the window and appear to be grabbing or something?

11 A No, he didn't do anything other than that.

12 Q Okay. When you -- when you had Mr. -- when  
13 you called him by name, "Andy," what if anything was his  
14 immediate reaction?

14:46:25 15 A He stopped from reaching inside the window.

16 MR. SHERMAN: I'm just going to object as  
17 vague and ambiguous.

18 BY MR. HENNESSEY:

19 Q When, um, he stopped what he was doing, what  
14:46:39 20 does that mean?

21 A He stopped from reaching inside the window.

22 Q Did he, um, basically come fully out from the  
23 window?

24 A Yes.

14:46:50 25 Q Did he -- um, was he facing you when he, um,

14:46:54 1 came out from the window? Meaning, did he turn to face  
2 you in your direction?

3 A I had to call him one -- one more time, or a  
4 couple more times, and then he faced me.

14:47:03 5 Q Okay. And what, if any directions did you  
6 give to him after calling him by name? What, if  
7 anything, did you specifically say to him?

8 A I told him to come towards me.

9 Q Okay. And what, if anything, did Mr. Tran do  
14:47:17 10 when you told him to come towards you?

11 A At that time, he complied and was starting to  
12 walk slowly towards me.

13 Q Did you tell him to come towards you slowly?

14 A No. I didn't. I just said, "Come towards  
14:47:34 15 me."

16 Q So there was nothing about the actions at that  
17 moment that -- well, did you have your -- any weapons in  
18 your hand while you stopped in the position that you  
19 described?

14:47:46 20 A No, I didn't.

21 Q Why not?

22 A I --

23 MR. SHERMAN: Objection. Relevancy.

24 Immateriality. Argumentative. Go ahead.

14:47:55 25 THE WITNESS: I did not see a need to at that

14:50:38 1 Q What I'm getting at, and not eloquently, was  
2 did you not withdraw a weapon because you did not want  
3 to frighten Mr. Tran, or excite him because of the  
4 nature of the call? Was that a consideration that you  
14:50:51 5 made?

6 A Yes, that was a consideration.

7 Q So you did not want to -- because you knew  
8 that you were responding to a potential 5150, you made a  
9 conscious discussion to not remove your -- any weapons  
14:51:03 10 because you did not want to excite or antagonize  
11 Mr. Tran? Was that a consideration that you made?

12 MR. SHERMAN: Compound. Misstates prior  
13 testimony. Go ahead.

14 THE WITNESS: I did not see a reason to draw  
14:51:16 15 my weapon at the time.

16 BY MR. HENNESSEY:

17 Q Okay. And you never saw a reason to draw your  
18 weapon at any time during this encounter with Mr. Tran;  
19 true?

14:51:25 20 A From my point of view.

21 Q From all the observations you made from  
22 Mr. Tran during your entire -- during your entire  
23 encounter, from the observations you made, you never  
24 felt it necessary to take out any weapons on Mr. Tran;  
14:51:39 25 fair?

14:51:42 1 A Up to which point?  
2 Q At any time.  
3 A Before the Tasing?  
4 Q Yes.  
14:51:48 5 A Up to the point where I placed one handcuff on  
6 his hand.  
7 Q Well, you did not ever take out a Taser, fair?  
8 A That's correct.  
9 Q You did not ever direct Officer Gendreau to  
10 take out a Taser, did you?  
11 A No, I didn't.  
12 Q And you personally, as you sit here today,  
13 don't know what made Officer Gendreau take out his  
14 Taser, true?  
14:52:15 15 MR. SHERMAN: Objection. Foundation.  
16 Speculation. Argumentative. Go ahead.  
17 THE WITNESS: I could not see what  
18 Officer Gendreau saw.  
19 BY MR. HENNESSEY:  
14:52:21 20 Q So you -- there was no conversations between  
21 you and Officer Gendreau where you were indicating it  
22 may be necessary to take out, or at least to display a  
23 Taser to Mr. Tran? There was no communication between  
24 you and Officer Gendreau related to that subject;  
14:52:35 25 correct?

14:55:05 1 recall when and at what point it was.

2 Q Okay. When he turned to face you, did you  
3 notice anything about his appearance that caused you any  
4 type of concern?

14:55:16 5 MR. SHERMAN: Objection. Vague and ambiguous.  
6 Overbroad. Go ahead.

7 THE WITNESS: That he had a blank stare on his  
8 face and he looked confused.

9 BY MR. HENNESSEY:

14:55:23 10 Q Did he appear to be sweating?

11 A I don't recall if he was or wasn't.

12 Q Could you see his breathing at that point in  
13 time? Could you hear his breathing or see his chest  
14 going up and down at that point when he immediately  
15 turned around?

14:55:40 16 MR. SHERMAN: Objection. Vague. Compound.  
17 Go ahead.

18 THE WITNESS: I wasn't watching for his  
19 breath. I was just mainly focused on his hands.

14:55:47 20 BY MR. HENNESSEY:

21 Q Would you -- that's my next question. Would  
22 it be fair to say that your -- your attention was, um,  
23 directed at his hands to make -- because you had heard  
24 that there may be a weapon involved, to make sure that

14:55:59 25 he never had a weapon in his hand or attempted to motion

14:56:02 1 as if he was trying to get a weapon; is that fair?

2 A Yes, that's fair. I was only focusing --  
3 mainly focusing on his hand.

4 Q Okay. And did you tell him to walk towards  
14:56:15 5 you, and did he comply with that request?

6 MR. SHERMAN: Objection. Asked and answered.  
7 Go ahead.

8 THE WITNESS: Yes, he did.

9 BY MR. HENNESSEY:

14:56:21 10 Q And I'm assuming this conversation's occurring  
11 in English?

12 A That is correct.

13 Q Do you speak Vietnamese?

14 A No, I don't.

14:56:28 15 Q When he walked towards you, did you tell him  
16 at any point in time to stop walking towards you?

17 A Yes, I did.

18 Q Why did you tell him to stop walking towards  
19 you?

14:56:38 20 A So that he can -- there can be some distance  
21 between me and him before I told him to put his hands up  
22 and turn around.

23 Q Okay. Was there anything about what you  
24 recall about his clothing? Did there appear to be any

14:56:50 25 lumps? Did there appear to be anything about the manner

14:57:49 1 that he turned around from the porch and walked towards  
2 you and stopped 10 or 15 feet away? Did he continue to  
3 look confused that entire time, at least to you?

4 A He had the same facial expression.

14:58:03 5 Q So is the answer yes, he did continue to look  
6 confused to you?

7 A Yes, that's correct.

8 Q When -- when you had him -- when he was 10 or  
9 15 feet away, was he walking facing you at that point in  
10 time?

11 A Yes, he was.

12 Q When you had him stop 10 or 15 feet way, did  
13 you have him turn around?

14 A Yes. I asked him to turn around.

14:58:21 15 Q And did he comply?

16 A Yes, he did.

17 Q Did he comply immediately or did it take more  
18 than one request?

19 A It was not immediately, but he complied by  
14:58:31 20 moving slowly.

21 Q Okay. And what did you tell him to do next?

22 A I then told him to place his hands on top of  
23 his head.

24 Q And did he comply with that request?

14:58:41 25 A Yes, he did.

14:59:34 1 did anything else happen between that time and the time  
2 that you ultimately approached him?

3 A No. Nothing else happened, and I started to  
4 approach Mr. Tran.

14:59:42 5 Q You indicated at some point in time, you  
6 requested that he interlock his fingers on his head.

7 Do you recall that?

8 A Yes, I do.

9 Q At what point in time did that occur?

14:59:52 10 A That occurred when I grabbed both of his  
11 wrists and told him to interlock his fingers.

12 Q Okay. Up until that point, Mr. Tran had not  
13 done anything to you that suggested he was preparing to  
14 attack you; is that fair?

15:00:05 15 A That's fair.

16 Q He did not make any motions that caused you  
17 immediate concern of him attacking you; is that fair?

18 A That's fair.

19 Q When you approached Mr. Tran, did you utilize  
15:00:22 20 the training that you've received in the Marine Corps  
21 and at the Garden Grove Police Department to place him  
22 in any type of particular hold on his wrists?

23 MR. SHERMAN: Objection. Compound. Vague and  
24 ambiguous. Foundation. Go ahead.

15:00:36 25 THE WITNESS: No. I just grabbed his wrist.

15:00:37 1 BY MR. HENNESSEY:

2 Q When you say you grabbed his wrist, did you  
3 grab a single wrist or both wrists?

4 A Both wrists.

15:00:42 5 Q Okay. Now, at that point in time, had he  
6 interlocked his fingers?

7 A Not until I told him to.

8 Q Okay. When you did tell him to interlock his  
9 fingers, how did you say that to him?

15:00:56 10 A I believe it was, "Andy, interlock your  
11 fingers."

12 Q And can you just demonstrate what interlocking  
13 your fingers means? Or when you say interlock your  
14 fingers, what do you mean?

15:01:08 15 A Interlock fingers, just like that.

16 (Indicating)

17 MR. HENNESSEY: And just for the record, even  
18 though there's a video camera here, the officer has  
19 placed his hands together, placing his fingers in

15:01:16 20 between each other so that the -- well, hopefully that's  
21 enough. Hopefully the video's working.

22 MR. SHERMAN: If not, hopefully you don't have  
23 to pay for it.

24 BY MR. HENNESSEY:

15:01:26 25 Q And when you asked Mr. Tran to interlock his

15:02:12 1 the request to interlock -- is it safer for you as a  
2 police officer to have a person's fingers interlocked?  
3 Is that what you've been trained, that it's safer for  
4 you for a person to interlock their fingers as opposed  
15:02:24 5 to keeping their hands separated?

6 MR. SHERMAN: Objection. Vague. Incomplete  
7 hypothetical. Go ahead.

8 THE WITNESS: Just for clarification, in my  
9 opinion, is it safer to have them interlock before --

15:02:33 10 BY MR. HENNESSEY:

11 Q Yeah. Why don't we start with what your  
12 opinion is. Do you believe it's safer for you to  
13 approach a subject who has interlocked fingers or a  
14 subject who has his hands on his head without  
15:02:44 15 interlocked fingers?

16 A It would depend on the situation.

17 Q How about this particular situation?

18 A I felt it was safe enough to approach and  
19 grab -- or contact Andy and then tell him to interlock  
15:02:56 20 his fingers since he was already complying.

21 Q Okay. Now, when you went hands-on with  
22 Mr. Tran, did you notice anything about his skin?  
23 Meaning, did it feel hot? Did it feel cold? Did it  
24 feel sweaty? Did it feel clammy? Did it feel -- was  
15:03:09 25 there anything about the texture of his skin that you

15:04:02 1 much time had elapsed?

2 A I would estimate between 15 and 45 seconds.

3 Q Okay. In relation to what you've described,  
4 Andy interlocking his fingers, when was it in relation  
15:04:22 5 to that event that you first saw Officer Gendreau?

6 A It was approximately -- from the time he  
7 interlocked his fingers until I saw Officer Gendreau, it  
8 was probably 5 to 15 seconds.

9 Q Okay. What was occurring during those 5 to 15  
15:04:42 10 seconds from the time that Andy interlocked his fingers  
11 until the time that you observed Mr. -- I'm sorry,  
12 Officer Gendreau?

13 A During that time, I pulled out my handcuffs  
14 from behind my back and placing it on his right wrist,  
15:04:57 15 and at that point, I can feel my other hand had shifted  
16 towards his fingers to control the interlocked fingers,  
17 and I could feel him -- as soon as the handcuff went on,  
18 I could feel him tense up.

19 So I grabbed the chain of the handcuff that  
15:05:15 20 was attached to his right wrist and his left wrist with  
21 my left hand and just attempted to hold him just in case  
22 he acted up, because at that point when the handcuff  
23 went on, he tensed up and it felt like it was going to  
24 be a fight.

15:05:32 25 Q Now, at the time that you were placing

15:05:36 1 handcuffs on Mr. Tran, he was facing away from you; is  
2 that fair?

3 A That's correct.

4 Q Officer Gendreau would have been facing from  
15:05:42 5 your rear, meaning that you would not -- he would have  
6 been facing -- you would have -- you would have had your  
7 back to him; is that fair?

8 A That's a possibility.

9 Q Well, I'm just asking as you remember the  
15:05:53 10 events. When you were placing handcuffs on Mr. Tran,  
11 was he facing the house?

12 A Yes, he was.

13 Q Were you placing handcuffs on him from a rear  
14 position, side position --

15:06:03 15 A Yes.

16 Q -- or front position?

17 A From a rear position.

18 Q Okay. And you -- you -- you followed your  
19 training in positioning yourself in a position of

15:06:14 20 advantage when you were placing the handcuffs on him in  
21 the rear?

22 MR. SHERMAN: Objection. Compound. It's  
23 vague and ambiguous. Go ahead.

24 THE WITNESS: That's correct.

15:06:23 25 ///

15:07:17 1 MR. SHERMAN: Objection. Relevancy.

2 Argumentative. Immaterial. Go ahead.

3 THE WITNESS: I don't know why I didn't.

4 BY MR. HENNESSEY:

15:07:21 5 Q Okay. Were you -- what type of manner were  
6 you speaking to him? What I -- what I mean by that,  
7 were you speaking to him in a calm voice? Were you  
8 speaking to him in a loud voice? How would you describe  
9 it?

15:07:32 10 A In a calm voice.

11 Q Can you -- can you demonstrate here how you  
12 remember speaking to Mr. Tran about putting his hands on  
13 his head and interlocking his fingers? Can you just try  
14 to demonstrate to the best of your ability the manner  
15:07:48 15 and tone in which you used --

16 A Sure. It's similar to how I'm talking now, in  
17 a calm way. And just telling, "Andy, come down from the  
18 stairs."

19 It's a little elevated because there's more  
15:07:58 20 distance between us. And as soon as he approached us --  
21 or approached me, told him to turn around and place his  
22 hands on top of his head. And once I grabbed him from  
23 behind, or grabbed his wrist from behind, I told him to  
24 interlock his fingers. And as I placed my handcuff on  
15:08:15 25 his right wrist, I could feel him tense up.

15:08:19 1 And that's when I started talking to him like  
2 this: "Andy, just relax. We're here to help you. You  
3 know, we're not here to hurt you. We are just here to  
4 help."

15:08:28 5 Q Okay. And at that point in time, he never  
6 actively pulled away from you; is that fair? His  
7 hand -- his fingers remained interlocked; is that fair?

8 MR. SHERMAN: Objection. It's compound.  
9 Vague. Go ahead.

15:08:40 10 THE WITNESS: I cannot recall if his hands  
11 were interlocked at that time.

12 BY MR. HENNESSEY:

13 Q Do you have an independent recollection of his  
14 hands, prior to the Tasing event, ever being -- ever  
15 being anything other than interlocked?

16 A I cannot recall if they were ever not  
17 interlocked or interlocked.

18 Q Okay. In -- would that have been a concern to  
19 you, if you noticed that his hands were no longer  
15:09:01 20 interlocked?

21 MR. SHERMAN: Objection. Vague as to time.

22 BY MR. HENNESSEY:

23 Q At the time you were attempting to handcuff  
24 him?

15:09:09 25 A At the time I was attempting to handcuff, they

15:09:13 1 weren't interlocked.

2 Q And again, based upon your observations and  
3 what Mr. Tran was doing, you did not feel it necessary  
4 to wait for backup before -- before taking the actions  
15:09:21 5 that you've made; correct?

6 A That's correct, because he was complying.

7 Q And you knew that there were up to two  
8 additional units responding; correct?

9 A That's correct.

15:09:29 10 Q And based upon your observations, you could  
11 have waited for backup to arrive before doing anything;  
12 true?

13 MR. SHERMAN: Objection. Argumentative.  
14 Irrelevant. Go ahead and answer.

15:09:38 15 THE WITNESS: Depending on the -- because of  
16 the situation of him inside, or partially inside the  
17 window, I made a decision to try and attempt to call him  
18 back, and -- so no further actions or harm can come to  
19 any person inside the building.

15:09:52 20 BY MR. HENNESSEY:

21 Q And again, you have no idea whether any harm  
22 came to anybody inside the building at any point that  
23 day; fair?

24 MR. SHERMAN: Objection. Asked and answered.

15:10:00 25 Overbroad. Scope and time. Vague and ambiguous.

15:11:05 1 You haven't suffered any type of head trauma or head  
2 injuries between September 23rd, 2008 and today's date,  
3 have you?

4 MR. SHERMAN: Vague. Vague. Ambiguous.  
15:11:15 5 Compound. Go ahead.

6 THE WITNESS: No, I haven't.

7 BY MR. HENNESSEY:

8 Q You never saw Officer Gendreau ever touch  
9 Andy Tran, did you? Prior to the Tasing event?

15:11:30 10 MR. SHERMAN: Objection. Vague. Go ahead.

11 THE WITNESS: Not that I can recall.

12 BY MR. HENNESSEY:

13 Q And that's what you told Internal Affairs when  
14 you were asked when they specifically asked you, "Did  
15:11:39 15 you ever observe Officer Gendreau touch Andy Tran?" You  
16 indicated no; correct?

17 MR. SHERMAN: Objection. Argumentative.  
18 Document speaks for itself, or something speaks for  
19 itself. Asked and answered. Go ahead.

15:11:50 20 THE WITNESS: That's correct. That's what the  
21 document says.

22 BY MR. HENNESSEY:

23 Q And you were -- well, that's -- you listened  
24 to the audio portion. That was you talking; correct?

15:11:57 25 A That is correct.

15:11:58 1 Q Okay. I mean, you don't have any reason to  
2 believe that the statements on that tape were made by  
3 anybody other than yourself; true?

4 A That's true.

15:12:07 5 Q Okay. And when you were speaking to  
6 Internal Affairs, you were being truthful with them;  
7 correct?

8 MR. SHERMAN: Objection. Asked and answered.  
9 Go ahead.

15:12:13 10 THE WITNESS: That's correct.

11 BY MR. HENNESSEY:

12 Q You were attempting to tell them -- you were  
13 attempting to respond to any question they asked in a  
14 truthful, honest, and forthright fashion; fair?

15:12:23 15 MR. SHERMAN: Same objection. Compound too.  
16 Go ahead.

17 THE WITNESS: That's correct.

18 BY MR. HENNESSEY:

19 Q And is there any reason that you would have  
15:12:28 20 had to have not told the truth to Internal Affairs?

21 A There is no reason why I wouldn't tell the  
22 truth. There is a statement at the end of my summary  
23 stating that I -- I did not recall if Officer Gendreau  
24 did touch Mr. Tran or not.

15:12:45 25 Q Okay. But not on the tape; correct?

15:16:47 1 Q Okay. Can you think of anything other than  
2 medical help that he needed based upon your  
3 observations?

4 MR. SHERMAN: Objection. Asked and answered.  
15:16:55 5 It's argumentative. Go ahead.

6 THE WITNESS: I can't think of any.

7 BY MR. HENNESSEY:

8 Q So is it reasonable to believe that when you  
9 told them it looked like he needed help, you were  
10 talking about medical help?

11 MR. SHERMAN: Objection. Argumentative.  
12 Asked and answered. Foundation. Go ahead.  
13 Speculation.

14 THE WITNESS: I still wanted to determine what  
15:17:16 15 type of help he needed. I guess the severity of medical  
16 help that was needed.

17 BY MR. HENNESSEY:

18 Q So based upon your observations, you  
19 determined that he needed some type of medical help, you  
15:17:26 20 just weren't sure what type of medical help may be  
21 required? Whether it's to treat a wound, whether it's  
22 to treat a mental illness, whether it's to treat a drug  
23 problem; fair?

24 A Not -- I want to say he just needed help.  
15:17:39 25 He -- I don't know if it was medical help or if he

15:18:57 1 fingers; fair?

2 A I cannot recall if I told him to release.

3 Q Well. You never told Internal Affairs that  
4 you told him to release and he failed to do so, did you?

15:19:07 5 MR. SHERMAN: Objection. Document speaks for  
6 itself.

7 THE WITNESS: I don't recall.

8 BY MR. HENNESSEY:

9 Q Okay. You do -- well, is it fair to say that  
15:19:12 10 as you sit here today, the only command you told him to  
11 do was to interlock his fingers? That's the only  
12 specific command you remember telling him to do at that  
13 point in time when you're trying to place handcuffs on  
14 him?

15:19:24 15 MR. SHERMAN: Objection. Misstates testimony.  
16 Go ahead.

17 THE WITNESS: Up to that point, that's -- were  
18 the only commands I did tell him.

19 BY MR. HENNESSEY:

15:19:32 20 Q Okay. So at the time that you were trying to  
21 place handcuffs on him and you say that he tensed up,  
22 for all you know, he was still attempting to comply with  
23 your orders to interlock his fingers; correct?

24 MR. SHERMAN: Objection. Speculation.

15:19:44 25 Foundation. Argumentative. Go ahead.

15:19:46 1 THE WITNESS: At that time, I felt he wasn't  
2 complying and he was --

3 BY MR. HENNESSEY:

4 Q In what manner was he not complying? What did  
15:19:53 5 you tell him to do that he failed to do?

6 A I told him to relax because he had tensed up.

7 Q Okay. Well, do you know how this guy is  
8 ordinarily? Whether what you saw was him normally or  
9 whether what you saw was him relaxed? Do you have any  
15:20:07 10 idea?

11 MR. SHERMAN: Foundation. Argumentative. Go  
12 ahead.

13 THE WITNESS: No, I don't.

14 BY MR. HENNESSEY:

15:20:10 15 Q Okay. So other than appearing to not relax,  
16 what order had he disobeyed?

17 A I cannot recall any other orders.

18 Q Okay. So up until this point in time,  
19 Mr. Tran had abided by every single command you had  
15:20:27 20 issued to him; true?

21 MR. SHERMAN: Objection. Argumentative.  
22 Misstates. Go ahead.

23 THE WITNESS: I did tell him to relax and he  
24 did not. By relax, I mean stop tensing up.

15:20:35 25 ///

15:21:25 1 with your command to relax? Is that what you're saying  
2 he disobeyed?

3 A That's correct.

4 Q Well, did you clarify with him, "Andy, listen.  
15:21:36 5 I'm going to put handcuffs on you; okay? I'm not here  
6 to hurt you; okay? Can you please just separate your  
7 fingers so I can place the handcuffs on you and then  
8 we'll get you some help?"

9 Did you ever say anything like that to him?

15:21:49 10 MR. SHERMAN: It's a little compound. Go  
11 ahead.

12 THE WITNESS: I don't recall saying  
13 anything -- or anything similar to that.

14 BY MR. HENNESSEY:

15:21:54 15 Q Okay. Why not?

16 MR. SHERMAN: Objection. Argumentative.  
17 Irrelevant. Go ahead.

18 THE WITNESS: Because I was trying to calm him  
19 down by just talking to him and telling him to, "Relax.  
15:22:02 20 We're just here to help."

21 BY MR. HENNESSEY:

22 Q Okay. But I mean, this is a guy who clearly  
23 looked confused, clearly looked like he needed some type  
24 of medical help, and had complied with every order  
15:22:12 25 issued to him up until that point; correct?

15:22:15 1 MR. SHERMAN: Objection. It's compound. It  
2 misstates prior testimony. It lacks foundation. It  
3 calls for speculation. Go ahead.

4 THE WITNESS: Up to that point, he was  
15:22:25 5 complying.

6 BY MR. HENNESSEY:

7 Q Okay. And when Officer Gendreau arrived, what  
8 do you remember telling him?

9 MR. SHERMAN: Telling him -- who?

15:22:33 10 MR. HENNESSEY: Gendreau.

11 THE WITNESS: I believe I told  
12 Officer Gendreau that he was complying, and I have one  
13 handcuff on, and he's tensed up.

14 BY MR. HENNESSEY:

15:22:44 15 Q Okay. Do you remember telling  
16 Officer Gendreau, "Hey, I got one handcuff on, and uh,  
17 he started resist, or resistance. Just not obeying or  
18 saying anything. I'm feeling at this point, probably  
19 he's going to be resistant."

15:22:58 20 Do you remember saying anything like that?

21 MR. SHERMAN: What page are you on?

22 MR. HENNESSEY: On page 7.

23 MR. SHERMAN: Let me object as it's compound.

24 Where on page 7?

15:23:09 25 MR. HENNESSEY: I'm sorry. The --

15:24:05 1 you say that you thought that he probably was going to  
2 be resistant?

3 MR. SHERMAN: At this point in time?

4 MR. HENNESSEY: Yes.

15:24:19 5 MR. SHERMAN: He's asking if that's what it  
6 says right there.

7 THE WITNESS: Yeah. It doesn't say that  
8 there.

9 BY MR. HENNESSEY:

15:24:23 10 Q Okay. I mean, you don't -- at least you  
11 didn't tell Internal Affairs that he had done any single  
12 act that was resist -- that resisted a command that you  
13 had made; correct?

14 MR. SHERMAN: Well, objection. Lacks  
15:24:35 15 foundation. Assumes facts not in evidence. Go ahead.  
16 It's compound.

17 THE WITNESS: I need to review this again. I  
18 thought I told him that he was tense and I wasn't able  
19 to get him handcuffed at that time.

15:24:50 20 BY MR. HENNESSEY:

21 Q But you never mention -- you never directed an  
22 order to Andy to, you know, to stop interlocking his  
23 fingers. To relax his hands. You never issued that  
24 order to him --

15:25:03 25 MR. SHERMAN: Objection.

15:25:04 1 MR. HENNESSEY: -- in any fashion?  
2 MR. SHERMAN: Objection. Asked and answered.  
3 Argumentative. You can answer it again.  
4 THE WITNESS: Okay. I don't believe I did. I  
15:25:10 5 told him to relax.  
6 BY MR. HENNESSEY:  
7 Q Okay. Now, when Officer Gendreau arrived;  
8 okay? His hands were interlocked at that point where  
9 you first laid eyes on Officer Gendreau; correct?  
15:25:21 10 MR. SHERMAN: Objection. Might misstate prior  
11 testimony. Go ahead, but it's compound.  
12 MR. HENNESSEY: If it misstates it, please  
13 explain how.  
14 THE WITNESS: I can't recall seeing if it was  
15:25:29 15 interlocked or not.  
16 BY MR. HENNESSEY:  
17 Q Do you recall telling Internal Affairs that in  
18 any point in time Mr. Tran took his fingers out of the  
19 position of the interlocked position that you told him  
15:25:39 20 to be in?  
21 A No, I do not remember telling Internal Affairs  
22 that I -- that I ever saw his hands or ordered him to  
23 not interlock his fingers.  
24 Q Okay. In fact, what you told Internal Affairs  
15:25:51 25 was that "his fingers were all tense and he was just not

15:26:55 1 anything on that aspect.

2 Q Did you ever see Mr. Tran's hands ball up into  
3 fists at any point in time?

4 A I cannot recall.

15:27:05 5 Q Do you recall telling that to  
6 Internal Affairs? That at some point in time, you saw  
7 his hands ball up into fists?

8 A I don't think I did.

9 Q Is the reason that you didn't tell that to  
15:27:14 10 Internal Affairs because you never made that  
11 observation, yourself personally? Seeing his hands ball  
12 up into fists?

13 A I didn't tell Internal Affairs because it was  
14 never asked, and I can't recall at this time.

15:27:26 15 Q Okay. So your -- your testimony is that you  
16 never said anything to Internal Affairs about his hands  
17 being balled up into fists because they never asked, but  
18 you don't have an independent recollection, as you sit  
19 here today, of his hands being balled up into fists.

15:27:40 20 Is that what you're saying?

21 A That's correct.

22 Q Well, you were giving -- they asked you, "What  
23 happened? And then what happened?"

24 And you were responding to questions like  
15:27:51 25 that; correct?

15:27:52 1 A That's correct.

2 Q I mean, they weren't asking you, "Were his  
3 hands unclenched? Were his hands in fists?"

4 They weren't asking you questions like that.

15:28:03 5 They were asking you to explain to them what happened in  
6 a narrative fashion; correct?

7 MR. SHERMAN: Objection. Argumentative.  
8 Foundation. Speculation. Document is what it is. Go  
9 ahead.

15:28:13 10 THE WITNESS: That's correct.

11 BY MR. HENNESSEY:

12 Q And you were responding -- you were trying to  
13 provide them as full and accurate a statement as to what  
14 you remember occurring on September 3rd when you were  
15:28:24 15 speaking to them; correct?

16 MR. SHERMAN: Objection. Asked and answered.  
17 Go ahead.

18 THE WITNESS: That's correct.

19 BY MR. HENNESSEY:

15:28:29 20 Q Do you remember his hands balling up into  
21 fists?

22 MR. SHERMAN: Objection. Asked and answered.  
23 Go ahead.

24 THE WITNESS: I cannot recall.

15:28:34 25 ///

15:28:34 1 BY MR. HENNESSEY:

2 Q Okay. You heard Officer Gendreau testify  
3 yesterday that Mr. Tran's hands were balled up into  
4 fists.

15:28:41 5 Do you recall that?

6 MR. SHERMAN: Foundation. Go ahead.

7 THE WITNESS: Yes, I do.

8 BY MR. HENNESSEY:

9 Q Do you remember that happening?

15:28:46 10 A I cannot recall.

11 Q Okay. Do you -- did Officer Gendreau try to  
12 help you try to handcuff Mr. Tran at any point in time?

13 MR. SHERMAN: Objection. Vague and ambiguous.  
14 Go ahead.

15:29:07 15 THE WITNESS: I cannot recall.

16 BY MR. HENNESSEY:

17 Q Did you tell Internal Affairs when they asked,  
18 "Okay. Did Gendreau try to help you before that, um,  
19 handcuff him by grabbing the guy?"

15:29:18 20 Do you remember that question being asked?

21 A Yes, I believe so.

22 Q And what was your response?

23 A I believe my response was no.

24 Q And what did you mean by that response?

15:29:27 25 MR. SHERMAN: Objection. Argumentative.

15:29:28 1 THE WITNESS: That he did not help me.

2 BY MR. HENNESSEY:

3 Q And what does that mean? Does that mean that  
4 you did not remember Officer Gendreau ever laying his  
15:29:37 5 hands on Mr. Tran in a fashion to help you handcuff him?  
6 You don't remember that ever happening, do you?

7 A I don't recall if it did or not.

8 Q So you're saying maybe it did, maybe it  
9 didn't, but if it did, you didn't tell Internal Affairs?

15:29:51 10 MR. SHERMAN: Objection. Argumentative.  
11 Counsel, at least change the tone of your voice when  
12 you're going to be sarcastic and nasty.

13 THE WITNESS: I don't recall, and from  
14 reviewing the state -- the summary of the IA, it states  
15:30:02 15 at the end of it, that I made a comment saying that I  
16 could not recall if Officer Gendreau was helping or not.

17 BY MR. HENNESSEY:

18 Q But on the tape, you didn't say anything about  
19 that; correct?

15:30:14 20 A That's correct.

21 MR. SHERMAN: Objection. Asked and answered.

22 THE WITNESS: That's correct.

23 BY MR. HENNESSEY:

24 Q Okay. And you don't know who wrote that  
15:30:17 25 summary, did you? You didn't write it, did you?

09:09 1 recall saying that?

09:09 2 A Yes, I do.

09:09 3 Q Okay. Is your memory now refreshed?

09:09 4 A Yes, it is.

09:09 5 Q Okay. And having refreshed your recollection,  
09:09 6 was that truthful, what you told Internal Affairs?

09:09 7 A Yes, it was.

09:09 8 Q And did you also say, "And at the same time I am  
09:09 9 just shaking both hands, not to agitate him, but to just,  
09:09 10 'Hey, I am still behind you. You know, just calm down'?"  
09:09 11 Do you recall saying words to those effects?

09:09 12 A Yes, I do.

09:09 13 Q Okay. When you shook his hands, did they move?  
09:09 14 When you say -- when you described as shaking both of his  
09:09 15 hands, were they -- did they move?

09:09 16 MR. SHERMAN: Objection. Vague as to "move."

09:09 17 Go ahead.

09:09 18 BY MR. HENNESSEY:

09:09 19 Q In any fashion. Did they move in any fashion?

09:10 20 MR. SHERMAN: It's still vague.

09:10 21 Go ahead.

09:10 22 BY MR. HENNESSEY:

09:10 23 Q Can you describe for the record what you did --  
09:10 24 what you did by shaking both hands?

09:10 25 A I can show.

09:10 1 Q Please.

09:10 2 A So this would be his right wrist, and I have the  
09:10 3 chain. I would be shaking where -- the fact it is just  
09:10 4 moving about that much.

09:10 5 Q Okay.

09:10 6 A Just to let him know that I was still behind  
09:10 7 him.

09:10 8 Q Now, you said, "I am shaking both hands." You  
09:10 9 just demonstrated on one hand.

09:10 10 Is that what you meant to describe? Were his  
09:10 11 fingers interlocked at this point in time?

09:10 12 A I cannot recall if they were or not.

09:10 13 Q Okay. Do you recall his fingers ever becoming  
09:10 14 anything other than interlocked at any time?

09:10 15 A Anything other than interlocked?

09:10 16 Q Yes.

09:10 17 A I did mention that they were starting to close.  
09:10 18 From that point I don't know if they became interlocked  
09:10 19 or I never saw them not become interlocked.

09:10 20 Q Do you recall telling Internal Affairs -- in the  
09:10 21 quotes there it says, "Hey, I am still behind you. You  
09:11 22 know, just calm down."

09:11 23 Is that something that you were telling them you  
09:11 24 were thinking, or is that something -- or words that you  
09:11 25 told to Mr. Tran?

09:11 1 A Those were words I was telling Mr. Tran.

09:11 2 Q "Just calm down," words to that effect?

09:11 3 A That's correct.

09:11 4 Q Okay. Then you say, "I am still telling, 'Hey,  
09:11 5 Andy, just calm down. Calm down.'"

09:11 6 Do you recall saying words to the effect of that  
09:11 7 to Mr. Tran while shaking his hands in the manner that  
09:11 8 you have described?

09:11 9 A That's correct. I was telling Mr. Tran to calm  
09:11 10 down.

09:11 11 Q And when you were shaking his hands, there was  
09:11 12 some movement in his hands, fair?

09:11 13 MR. SHERMAN: Objection. Misstates, vague.

09:11 14 Go ahead.

09:11 15 THE WITNESS: Yes, that's fair to say.

09:11 16 BY MR. HENNESSEY:

09:11 17 Q And Gendreau, as far as there's an unclear, and  
09:11 18 he is telling him the same thing, quote, "Hey, dude, hey,  
09:11 19 dude, you just need to relax. Calm down."

09:11 20 Do you recall Officer Gendreau saying words to  
09:11 21 those -- to that effect?

09:11 22 A Yes, I do.

09:11 23 Q Is that based upon your independent recollection  
09:11 24 having been refreshed with that document?

09:12 25 A That's correct.

09:12 1 Q Okay. "And that's when he pulled out his  
09:12 2 Taser."

09:12 3 Are you referring to Officer Gendreau at that  
09:12 4 point in time?

09:12 5 A Yes, I am.

09:12 6 Q And did Officer Gendreau say, "If you -- if you  
09:12 7 don't calm down, I am going to have to Tase you."

09:12 8 Did Officer Gendreau say words to that effect?

09:12 9 A He said words to that effect.

09:12 10 Q Okay. You have an independent recollection of  
09:12 11 him saying words to that effect?

09:12 12 A Yes, I do.

09:12 13 Q Okay. And would it be fair to say that during  
09:12 14 this whole time Andy did not say anything?

09:12 15 A That's correct.

09:12 16 Q And at approximately this time -- do you recall  
09:12 17 being asked by Internal Affairs at that point, "Okay.  
09:12 18 Did Gendreau try to help you before that, um, handcuff  
09:12 19 him by grabbing the guy?"

09:12 20 Do you recall being asked that question?

09:12 21 A Yes, I do.

09:12 22 Q Do you recall your answer?

09:12 23 A Yes, I do.

09:12 24 MR. SHERMAN: Objection. Asked and answered.

09:12 25 ///

09:12 1 BY MR. HENNESSEY:

09:12 2 Q What was your answer?

09:12 3 MR. SHERMAN: Same objection. Asked and  
09:12 4 answered.

09:12 5 Go ahead.

09:12 6 THE WITNESS: It was "no."

09:12 7 BY MR. HENNESSEY:

09:12 8 Q And did you understand that they were asking you  
09:12 9 about what Officer Gendreau did before he pulled his  
09:13 10 Taser out?

09:13 11 MR. SHERMAN: Objection. Speculation,  
09:13 12 foundation.

09:13 13 BY MR. HENNESSEY:

09:13 14 Q Is that what you understood Internal Affairs was  
09:13 15 asking you about?

09:13 16 MR. SHERMAN: Assumes facts not in evidence.  
09:13 17 Go ahead.

09:13 18 THE WITNESS: I believe Internal Affairs was  
09:13 19 asking if Officer Gendreau helped in any way by grabbing  
09:13 20 him, and I don't -- I didn't recall Officer Gendreau  
09:13 21 putting hands on, so that's why I said "no."

09:13 22 BY MR. HENNESSEY:

09:13 23 Q Okay. Because at least the recollection that  
09:13 24 you had as of September 23rd, 2008, was that you did not  
09:13 25 recall Officer Gendreau helping you in any manner by

09:13 1 grabbing Mr. Tran to help in handcuffing him, fair?

09:13 2 A I got a little confused on what was the question  
09:13 3 for that.

09:13 4 Q The question from me or the question from  
09:13 5 Internal Affairs?

09:13 6 A The question from you.

09:13 7 Q Okay. Was your recollection on September 23rd,  
09:13 8 when you were talking to Internal Affairs, that you did  
09:13 9 not recall Officer Gendreau attempting to help you  
09:13 10 handcuff Mr. Tran by grabbing ahold of him in any manner?

09:14 11 A Yes, that's why I said "no" to that question.

09:14 12 Q All right. And then you said, "For" -- now, did  
09:14 13 you say, "For about a minute we were just trying to calm  
09:14 14 him down. He still tensed up."

09:14 15 Do you recall saying those words to  
09:14 16 Internal Affairs?

09:14 17 A Yes.

09:14 18 Q Do you recall telling Internal Affairs, "His  
09:14 19 fingers are just tense and I can't break -- break the  
09:14 20 hold. So then, uh, Gendreau said like he is -- he is --  
09:14 21 like, 'Hey, Danny, I am just going to -- I am just going  
09:14 22 to Tase him'"? Do you recall saying those words to  
09:14 23 Internal Affairs?

09:14 24 A Is it all right if I review again --

09:14 25 Q Please.

09:15 1 A Yes, that's correct.

09:15 2 Q That Officer Gendreau said words to the effect  
09:15 3 of, "Hey, Danny, I am just going to -- I am just going to  
09:15 4 Tase him," did he say words to that effect?

09:15 5 MR. SHERMAN: Objection. Asked and answered.  
09:15 6 Go ahead.

09:15 7 THE WITNESS: Yes, to that effect.

09:15 8 BY MR. HENNESSEY.

09:15 9 Q And then you said something like, "Um, like,  
09:15 10 okay"?

09:15 11 A Yes, something to that effect.

09:15 12 Q Now, up until this point in time, were you  
09:15 13 trying to be as open and honest with Internal Affairs  
09:16 14 about all comments that you heard Officer Gendreau make  
09:16 15 to Mr. Tran prior to the Tasing event?

09:16 16 MR. SHERMAN: Objection. Vague, ambiguous,  
09:16 17 assumes facts not in evidence, lacks foundation, it's  
09:16 18 argumentative.

09:16 19 Go ahead, if you understand the question.

09:16 20 THE WITNESS: Yes.

09:16 21 BY MR. HENNESSEY:

09:16 22 Q Did you ever hear Officer Gendreau tell Mr. Tran  
09:16 23 to put his hands behind his back?

09:16 24 A I did not hear everything that Officer Gendreau  
09:16 25 said, but everything I told Internal Affairs is what I

09:16 1 can recall at that time.

09:16 2 Q Okay. Can you describe the manner that you  
09:16 3 heard Officer Gendreau speaking?

09:16 4 A Yes, I can recall.

09:16 5 Q Can you please do so for the record?

09:16 6 A Officer Gendreau was talking as if in my tone of  
09:16 7 voice and the way I explained how I was talking to  
09:16 8 Mr. Tran yesterday.

09:16 9 Q And during this conversation, how far away was  
09:16 10 Officer Gendreau from you during the time that he was  
09:16 11 communicating -- or apparently communicating with  
09:16 12 Mr. Tran?

09:17 13 MR. SHERMAN: Let me object to the following  
09:17 14 question as possibly calls for speculation, lacks  
09:17 15 foundation.

09:17 16 Go ahead.

09:17 17 THE WITNESS: Officer Gendreau was in between --  
09:17 18 or on the other side of Mr. Tran, so he might have been  
09:17 19 between one foot to three feet away.

09:17 20 BY MR. HENNESSEY:

09:17 21 Q Okay. The words that you told to  
09:17 22 Internal Affairs, were those words that you heard coming  
09:17 23 out of Officer Gendreau's mouth?

09:17 24 A Those were the words that I could understand  
09:17 25 from Officer Gendreau.

09:17 1 Q Okay. Did you ever hear Officer Gendreau direct  
09:17 2 Mr. Tran to put his hands behind his back?

09:17 3 MR. SHERMAN: Objection. Asked and answered.

09:17 4 THE WITNESS: At the time of that incident, I --  
09:17 5 BY MR. HENNESSEY:

09:17 6 Q Calls for a "yes" or "no," sir.

09:17 7 Did you hear it or not?

09:17 8 A At that time when I talked to Internal Affairs I  
09:17 9 did not.

09:17 10 Q Okay. Do you recall Officer Gendreau ever  
09:17 11 telling Mr. Tran to put his hands behind his back prior  
09:17 12 to the time he Tasered him?

09:17 13 MR. SHERMAN: Objection. Asked and answered.

09:17 14 Go ahead.

09:18 15 THE WITNESS: I did not recall when asked by  
09:18 16 Internal Affairs.

09:18 17 BY MR. HENNESSEY:

09:18 18 Q Have you been trained, in your training at any  
09:18 19 time in the Garden Grove Police Department up until  
09:18 20 September 3rd, 2008, that "Hey, dude, just calm down" is  
09:18 21 a lawful order? Have you ever been trained in that -- to  
09:18 22 that effect?

09:18 23 MR. SHERMAN: Objection. Argumentative.

09:18 24 Go ahead.

09:18 25 THE WITNESS: I believe it's a reasonable order

09:18 1 when trying to talk to someone.

09:18 2 BY MR. HENNESSEY:

09:18 3 Q Who in the Garden Grove Police Department has  
09:18 4 told you that "Hey, dude just calm down" is a lawful  
09:18 5 order? Can you think of a name of any officer who told  
09:18 6 you that "Hey, dude, just calm down" is a lawful order?

09:18 7 A It's just a way of talking to people.

09:18 8 Q As you sit here today, can you think of any  
09:18 9 officer who told you that "Hey, dude, just calm down" is  
09:18 10 a lawful order prior to September 3rd of 2008? Can you  
09:18 11 think of a name of any training officer who told you  
09:18 12 that?

09:18 13 A No, I cannot.

09:18 14 Q Did you learn that at the Garden West Academy  
09:18 15 that "Hey, dude, just calm down" is a lawful order?

09:18 16 MR. SHERMAN: Golden West Academy.

09:18 17 MR. HENNESSEY: Golden West Academy.

09:18 18 MR. SHERMAN: And it's argumentative and  
09:19 19 irrelevant.

09:19 20 Go ahead.

09:19 21 THE WITNESS: Not that I can recall.

09:19 22 BY MR. HENNESSEY:

09:19 23 Q Okay. Did you ever -- were you ever trained  
09:19 24 that "Just calm down, just calm down" are lawful orders?

09:19 25 MR. SHERMAN: It's probably been asked and

09:19 1 answered.

09:19 2 Go ahead.

09:19 3 MR. HENNESSEY: I am just going down the  
09:19 4 transcript.

09:19 5 MR. SHERMAN: Yes, but it's still been asked and  
09:19 6 answered whether you are going through the transcript or  
09:19 7 not.

09:19 8 Go ahead.

09:19 9 THE WITNESS: I felt that was a way of talking  
09:19 10 to Mr. Tran.

09:19 11 BY MR. HENNESSEY:

09:19 12 Q The question is, have you been trained that  
09:19 13 that's a lawful order?

09:19 14 A Not that I can recall.

09:19 15 Q Have you been trained that lawful orders are,  
09:19 16 "Put your hands behind your back"? Have you been trained  
09:19 17 in that?

09:19 18 A Yes, I have.

09:19 19 Q Okay. Did you ever hear Officer -- did you ever  
09:19 20 say that to Mr. Tran at any time prior to when he was  
09:19 21 Tased -- to the time he was Tasered? Did you ever say,  
09:19 22 "Andy, can you please put your hands behind your back"?

09:19 23 MR. SHERMAN: Well, it's compound, it's been  
09:19 24 asked and answered.

09:19 25 Go ahead.

09:19 1 THE WITNESS: No, I didn't.

09:19 2 BY MR. HENNESSEY:

09:19 3 Q And do you recall Officer Gendreau ever saying  
09:19 4 any words to the effect of what Mr. Tran was or wasn't  
09:20 5 doing with his hands? Anything about his hands, "Don't  
09:20 6 clench your hands. Unclench your hands"? Do you recall  
09:20 7 Officer Gendreau saying anything about his hands at all?

09:20 8 A I did not hear Officer Gendreau say anything  
09:20 9 about his hands.

09:20 10 Q Okay. So would it be fair to say that up until  
09:20 11 the time that Officer Gendreau Tasered Mr. Tran, no  
09:20 12 police officer, in your presence, had ever told Mr. Tran  
09:20 13 to put his hands behind his back?

09:20 14 MR. SHERMAN: Objection. Misstates prior  
09:20 15 testimony, it's argumentative.

09:20 16 Go ahead. It's compound.

09:20 17 THE WITNESS: From what I said and what I heard  
09:20 18 from Officer Gendreau, I did not hear anyone say to  
09:20 19 Mr. Tran to put his hands behind his back.

09:20 20 MR. SHERMAN: Are you going to let him finish  
09:20 21 answering before you cut him off?

09:20 22 MR. HENNESSEY: I'm sorry. I thought he was.

09:20 23 MR. SHERMAN: No, he wasn't.

09:20 24 MR. HENNESSEY: Sorry. I thought he was.

09:20 25 MR. SHERMAN: Go ahead.

09:20 1 BY MR. HENNESSEY:

09:20 2 Q Officer, do you remember telling Andy anything  
09:20 3 about, "Andy, calm down. I am just trying to place  
09:20 4 handcuffs on you"? Do you ever remember words to that  
09:20 5 effect?

09:20 6 A I did not say any words to those effects.

09:21 7 Q Do you remember Officer Gendreau saying any  
09:21 8 words to the effect of, "Hey, dude, I am -- we are just  
09:21 9 trying to put handcuffs on you"? Do you remember him  
09:21 10 saying anything like that?

09:21 11 A I do not recall hearing Officer Gendreau say  
09:21 12 anything to that effect.

09:21 13 Q Do you recall Officer Gendreau saying anything  
09:21 14 about handcuffs at all?

09:21 15 A I did not hear Officer Gendreau say anything  
09:21 16 about handcuffs.

09:21 17 Q And, again, this communication was all happening  
09:21 18 from a distance of one or two feet away, correct?

09:21 19 MR. SHERMAN: Objection. Misstates.

09:21 20 THE WITNESS: I said one to three feet away.

09:21 21 BY MR. HENNESSEY:

09:21 22 Q Okay. One to three feet away, correct?

09:21 23 A That's correct.

09:21 24 Q Okay. Now, did the -- Officer Gendreau's manner  
09:21 25 in speaking change at any point in time prior to the time

09:24 1 BY MR. HENNESSEY:

09:24 2 Q Any words to the effect about his hands,  
09:24 3 anything he was doing with his hands.

09:24 4 MR. SHERMAN: Compound.

09:24 5 Go ahead.

09:24 6 THE WITNESS: No words --

09:24 7 MR. SHERMAN: I think it's asked and answered,  
09:24 8 but go ahead.

09:24 9 THE WITNESS: No words directed to his hands.

09:24 10 BY MR. HENNESSEY:

09:24 11 Q But just so I am clear, do you recall telling  
09:24 12 Mr. Tran -- during the time that you saw Officer Gendreau  
09:24 13 on scene, do you remember directing any comments to  
09:24 14 Mr. Tran to do anything with his hands -- anything with  
09:24 15 his hands other than what you have already testified to,  
09:24 16 interlock his fingers?

09:25 17 A Other than interlock his fingers, I did not tell  
09:25 18 him to do anything else with his hands.

09:25 19 Q When Officer Gendreau told you, "Hey, Danny, I  
09:25 20 am just going to Tase him," is the only thing you said  
09:25 21 "Okay," or was there any communication about that between  
09:25 22 you and Officer Gendreau that you recall?

09:25 23 MR. SHERMAN: Objection. Compound, foundation.

09:25 24 Go ahead.

09:25 25 THE WITNESS: From what I can recall, the only

09:26 1 THE WITNESS: I cannot recall which training  
09:26 2 officer said it, but most likely each training officer  
09:26 3 said, if need be, interfere with another officer if you  
09:26 4 believe a criminal act or injustice is occurring.

09:26 5 BY MR. HENNESSEY:

09:26 6 Q During this time that you are describing about  
09:26 7 the communication between Mr. Tran and Officer Gendreau,  
09:26 8 you were behind Mr. Tran during that time, correct?

09:26 9 A That is correct.

09:26 10 Q Officer Gendreau was in front of him during this  
09:26 11 time; is that true?

09:26 12 A That's correct.

09:26 13 Q Okay. When he took his Taser out, did you move  
09:26 14 in any manner?

09:26 15 MR. SHERMAN: Objection. Vague, ambiguous.

09:27 16 THE WITNESS: Not until -- not until  
09:27 17 Officer Gendreau said he was going to Tase, and then I  
09:27 18 took a step -- a small step to my left.

09:27 19 BY MR. HENNESSEY:

09:27 20 Q And what, if anything, did you do with your  
09:27 21 hands?

09:27 22 A I kept my hands on the handcuff and on his left  
09:27 23 wrist.

09:27 24 Q Okay. In the manner that you have previously  
09:27 25 described?

09:33 1 remembrance?

09:33 2 A Prior to the Tasing?

09:33 3 Q Yes.

09:33 4 A No, it didn't.

09:33 5 Q So what's the rush? Why not --

09:33 6 MR. SHERMAN: What's what rush?

09:33 7 BY MR. HENNESSEY:

09:33 8 Q What's the rush to Taser him? Why was there a  
09:33 9 need to Taser this guy so quickly based upon what you  
09:33 10 heard?

09:33 11 MR. SHERMAN: You know what, it's irrelevant,  
09:33 12 it's been asked and answered, it's argumentative, it's  
09:34 13 vague and ambiguous.

09:34 14 You can answer. It also possibly calls for  
09:34 15 speculation, foundation. Go ahead.

09:34 16 THE WITNESS: At the time I could not control  
09:34 17 Mr. Tran and get him into a handcuffing technique.  
09:34 18 Officer Gendreau was in front of Mr. Tran and could see  
09:34 19 something and advised that he was going to Tase.

09:34 20 BY MR. HENNESSEY:

09:34 21 Q What did he say that he could see? What did  
09:34 22 Officer Gendreau tell you, "Hey, dude, this is what I am  
09:34 23 seeing"?

09:34 24 A I don't recall him saying anything.

09:34 25 Q Okay. So you don't know why Officer Gendreau

09:35 1 THE WITNESS: Yes, I have.

09:35 2 BY MR. HENNESSEY:

09:35 3 Q Then why didn't you ask Officer Gendreau, "What  
09:35 4 do you see that requires him to be Tasered?" Why didn't  
09:35 5 you ask him that?

09:35 6 MR. SHERMAN: It's argumentative, it's compound,  
09:35 7 it's irrelevant.

09:35 8 Go ahead.

09:35 9 THE WITNESS: Because of the situation I was in  
09:35 10 and I trusted Officer Gendreau.

09:35 11 BY MR. HENNESSEY:

09:35 12 Q You have never worked with Officer Gendreau, to  
09:35 13 your knowledge, prior to September 3rd of 2008, had you?

09:35 14 A No, I haven't.

09:35 15 Q So what did you know about him that was so  
09:35 16 trustworthy?

09:35 17 MR. SHERMAN: Objection. Argumentative.

09:35 18 THE WITNESS: He's a police officer.

09:35 19 BY MR. HENNESSEY:

09:35 20 Q So just the mere fact that he was a police  
09:35 21 officer made him trustworthy to you?

09:35 22 A Yes, it does.

09:35 23 Q And you are testifying consistently with the  
09:35 24 nature of trust that you have for fellow police officers  
09:35 25 here in this deposition, aren't you?

09:37 1 to Taser this gentleman for?" Was there anything  
09:37 2 prohibiting you from asking Officer Gendreau that type of  
09:37 3 question?

09:37 4 MR. SHERMAN: Objection. It's irrelevant, it's  
09:37 5 been asked and answered, it's argumentative.

09:37 6 Go ahead.

09:37 7 THE WITNESS: No, there wasn't.

09:37 8 BY MR. HENNESSEY:

09:37 9 Q Have you been trained that you must exhaust all  
09:37 10 reasonable means of force prior to the escalation of  
09:37 11 force? Have you been trained in that regard?

09:37 12 MR. SHERMAN: That's definitely been asked and  
09:37 13 answered, it's argumentative, it's compound.

09:37 14 Go ahead.

09:37 15 THE WITNESS: We have been trained to use  
09:37 16 reasonable force, to exercise whatever is necessary to  
09:38 17 detain or arrest a subject.

09:38 18 BY MR. HENNESSEY:

09:38 19 Q Are you done?

09:38 20 A Yes.

09:38 21 Q You indicated before that you were aware of the  
09:38 22 concept of continuum of force, correct?

09:38 23 A That's correct.

09:38 24 Q Before September 3rd, correct?

09:38 25 A That's correct.

09:41 1 the transcript, and you feel that you have come to a part  
09:41 2 in the transcript where you told Internal Affairs about  
09:41 3 Mr. Tran resisting or actively resisting; is that fair?

09:41 4 A That's fair.

09:41 5 Q Is it the portion where you told  
09:41 6 Internal Affairs, "Officer Gendreau arrived, and I --  
09:41 7 uh -- uh -- I -- I informed him, 'Hey, I got one handcuff  
09:41 8 on and he started resist or ? resistance, just not obey  
09:41 9 or coughs or saying anything.'"

09:41 10 Is that what you feel was the part of your  
09:41 11 Internal Affairs interview where you told them that he  
09:41 12 was actively resisting or resisting in any fashion?

09:41 13 A As in resisting in any fashion, yes, that is the  
09:41 14 part.

09:41 15 Q Okay. Do you want to review the remainder of  
09:41 16 the transcript to determine whether you made any other  
09:41 17 statement to Internal Affairs about resistance, active  
09:42 18 resistance, or any words of resistance prior to the  
09:42 19 Tasing event?

09:42 20 MR. SHERMAN: Once again, the document is going  
09:42 21 to speak for itself.

09:42 22 BY MR. HENNESSEY:

09:42 23 Q Your independent recollection.

09:42 24 A I don't recall saying the exact words of  
09:42 25 "actively resisting," but I do recall saying resisting.

09:42 1 Q And what you read there -- and you heard your  
09:42 2 tape, too, correct?

09:42 3 A That's correct.

09:42 4 Q Okay. And that transcript, although it may not  
09:42 5 be, you know, every letter of every word, it's very close  
09:42 6 to what you did say, fair?

09:42 7 A That's fair.

09:42 8 Q Okay. And --

09:42 9 MR. SHERMAN: Just for the record -- and, again,  
09:42 10 the document speaks for itself -- there's another place  
09:42 11 below again on page 6 where the answer is, "I am feeling  
09:42 12 at that point probably he is just going to be resisting,"  
09:42 13 so there's another one, but I will continue to pursue.

09:42 14 MR. HENNESSEY: That's fine.

09:42 15 Q So when you said you felt that he was going to  
09:42 16 be resisting, was that your way of communicating to  
09:42 17 Internal Affairs that Mr. Tran was, in fact, resisting?

09:42 18 A Yes.

09:42 19 Q Or was it your state of mind when you said, "I  
09:43 20 am feeling, uh, at this point probably that he is going  
09:43 21 to be resisting"? When you made that statement to  
09:43 22 Internal Affairs, was that your attempt to tell them that  
09:43 23 he was, in fact, resisting or you thought he was going to  
09:43 24 resist?

09:43 25 MR. SHERMAN: Objection. Argumentative,

09:43 1 compound.

09:43 2 THE WITNESS: I thought he was going to resist.

09:43 3 BY MR. HENNESSEY:

09:43 4 Q Okay. So he wasn't resisting at that point?  
09:43 5 You thought he was, but he wasn't actually resisting,  
09:43 6 fair?

09:43 7 MR. SHERMAN: Objection. Argumentative,  
09:43 8 misstates.

09:43 9 Go ahead.

09:43 10 THE WITNESS: I think at that time I was trying  
09:43 11 to illustrate that he was -- it was going to be more of a  
09:43 12 resistance than just a slight resistance.

09:43 13 BY MR. HENNESSEY:

09:43 14 Q Okay. And you said, "That it might -- it might  
09:43 15 turn violent, just by the way of how his body just  
09:43 16 reacted once I got one handcuff on."

09:43 17 So, again, that's your state of mind, that you  
09:43 18 thought it might turn violent, correct?

09:43 19 A That's correct.

09:43 20 Q It hadn't turned violent at the point that  
09:43 21 Mr. Tran had been Tasered, had it?

09:43 22 MR. SHERMAN: Objection. Argumentative, I  
09:43 23 believe it's asked and answered.

09:44 24 Go ahead.

09:44 25 THE WITNESS: No.

10:00 1 my leg to prop and lock his left -- his left arm in  
10:00 2 place. At that time I was pulling -- or I used the  
10:00 3 handcuff to turn his right hand away from his head  
10:01 4 towards his body, and that's when the five-second cycle  
10:01 5 ended, and that's when he stiffened up his right elbow.  
10:01 6 And then I used -- having control of his left hand with  
10:01 7 my legs, I was able to bend his elbow at the joint and  
10:01 8 able to handcuff him at that time.

10:01 9 BY MR. HENNESSEY:

10:01 10 Q Would it be fair to say that the only order that  
10:01 11 Mr. Tran had disobeyed by both you and Officer Gendreau  
10:01 12 was to relax or to calm down?

10:01 13 MR. SHERMAN: Objection. Argumentative, asked  
10:01 14 and answered.

10:01 15 Go ahead.

10:01 16 THE WITNESS: From what I heard, yes.

10:01 17 BY MR. HENNESSEY:

10:01 18 Q Did you have an opportunity to look at  
10:01 19 Mr. Tran's face during this handcuffing process that you  
10:01 20 have just described?

10:01 21 MR. SHERMAN: As he is going down?

10:01 22 BY MR. HENNESSEY:

10:01 23 Q Well, at any point in time, while he was going  
10:02 24 down or during this handcuffing process that you have  
10:02 25 just described.

10:02 1 A No, I didn't.

10:02 2 Q How about at any time after the handcuffs were  
10:02 3 in place?

10:02 4 A Yes, I did.

10:02 5 Q And did Mr. Tran still seem to have that  
10:02 6 confused face?

10:02 7 A I cannot recall.

10:02 8 Q Did he appear to still need help, as you  
10:02 9 described, of the type that he needed before he was  
10:02 10 Tasered?

10:02 11 MR. SHERMAN: Objection. Vague, foundation,  
10:02 12 speculation.

10:02 13 Go ahead.

10:02 14 THE WITNESS: I cannot recall.

10:02 15 BY MR. HENNESSEY:

10:02 16 Q Prior to the time he was Tasered, did you ever  
10:02 17 hear Mr. Tran growling?

10:02 18 A I did not hear Mr. Tran growling.

10:02 19 Q When you personally observed his face while you  
10:02 20 were approaching him, before you asked him to turn  
10:02 21 around, could you actually see his face?

10:02 22 A Yes.

10:02 23 MR. SHERMAN: Objection. Vague.

10:02 24 THE WITNESS: Yes, I did see his face.

10:02 25 ///

10:02 1 BY MR. HENNESSEY:

10:02 2 Q Did you see drool and/or saliva running down his  
10:02 3 face?

10:02 4 MR. SHERMAN: Foundation, speculation, vague.

10:03 5 THE WITNESS: I did not notice any.

10:03 6 BY MR. HENNESSEY:

10:03 7 Q Did he seem to be frothing at the mouth in any  
10:03 8 manner that you personally observed?

10:03 9 A I did not notice any.

10:03 10 Q Do you remember him making any noises of any  
10:03 11 type prior to the time the Taser was deployed?

10:03 12 MR. SHERMAN: Objection. Vague.

10:03 13 Go ahead.

10:03 14 THE WITNESS: I do not recall hearing any  
10:03 15 noises from Mr. Tran.

10:03 16 BY MR. HENNESSEY:

10:03 17 Q Would it be fair to say that Mr. Tran never  
10:03 18 spoke a word prior to the time he was Tasered that you  
10:03 19 heard?

10:03 20 A I did not hear Mr. Tran speak a word.

10:03 21 Q Prior to the time he was Tasered?

10:03 22 A That's correct.

10:03 23 Q And after the time he was Tasered, you never  
10:03 24 heard him speak a word, did you?

10:03 25 A That's correct.

10:15 1 BY MR. HENNESSEY:

10:15 2 Q -- from your training and experience as a police  
10:15 3 officer --

10:15 4 A It doesn't --

10:15 5 Q -- or as a marine?

10:15 6 A It doesn't -- I can't recall.

10:15 7 Q All right. Was Mr. Tran breathing at the time  
10:15 8 that you saw Officer Gendreau open his eyelids?

10:16 9 A I cannot recall.

10:16 10 Q At some point in time did you exit the house and  
10:16 11 see the paramedics doing anything with Mr. Tran?

10:16 12 A I did not exit the house, but I can see the  
10:16 13 paramedics doing CPR.

10:16 14 Q Why didn't you exit the house when you saw  
10:16 15 paramedics performing CPR on Mr. Tran?

10:16 16 MR. SHERMAN: Objection. Relevancy,  
10:16 17 materiality.

10:16 18 Go ahead.

10:16 19 THE WITNESS: Officer Gendreau went outside and  
10:16 20 the family was still inside, so I wanted to speak with  
10:16 21 the family and talk with them and prevent them from  
10:16 22 interfering with the paramedics working on Mr. Tran.

10:16 23 BY MR. HENNESSEY:

10:16 24 Q Is it true -- did you order the family to go  
10:16 25 into the house after Mr. Tran was Tasered? Did you or --

1 CERTIFICATION  
2 OF  
3 CERTIFIED SHORTHAND REPORTER  
4

5 I, the undersigned, a Certified Shorthand  
6 Reporter of the State of California do hereby certify:

7 That the foregoing proceedings were taken  
8 before me at the time and place herein set forth; that  
9 any witnesses in the foregoing proceedings, prior to  
10 testifying, were placed under oath; that a verbatim  
11 record of the proceedings was made by me using machine  
12 shorthand which was thereafter transcribed under my  
13 direction; further, that the foregoing is an accurate  
14 transcription thereof.

15 I further certify that I am neither  
16 financially interested in the action nor a relative or  
17 employee of any attorney of any of the parties.

18 IN WITNESS WHEREOF, I have this date

19  
20 subscribed my name



*Amber N Jensen*

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CERTIFICATION

OF

CERTIFIED SHORTHAND REPORTER

I, the undersigned, a Certified Shorthand  
Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth; that  
any witnesses in the foregoing proceedings, prior to  
testifying, were placed under oath; that a verbatim  
record of the proceedings was made by me using machine  
shorthand which was thereafter transcribed under my  
direction; further, that the foregoing is an accurate  
transcription thereof.

I further certify that I am neither financially  
interested in the action nor a relative or employee of  
any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date  
subscribed my



Lawrence S. Freeman

Dated: \_\_\_\_\_

Certificate Number \_\_\_\_\_